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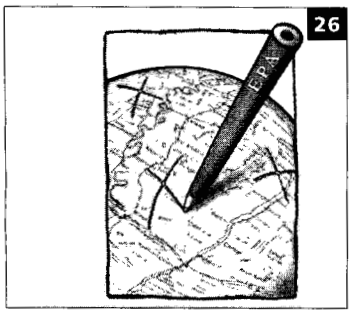

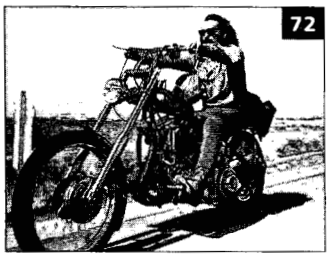

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The Claims of Nature

The "can gays change" debate is muddling the main issues.

By Virginia Postrel

In 1973, when the American Psychiatric Association took homosexuality off its list of mental disorders, this summer's controversy over whether gays can change would have been hard to imagine. Although there were always people understood to be spinsters and "confirmed bachelors" for reasons other than independence or social ineptitude, few heterosexuals knew any out-of-the-closet gays. Same-sex dates certainly weren't likely to show up at family gatherings or business dinner parties—much less White House functions or the Academy Awards. To be openly gay was to stand outside normal society. Bourgeois mores, it was thought, depended on pretending that homosexuality did not exist.

That has changed. Thanks to the simple but radical concept of persuading people to stop living double lives, the social equilibrium has shifted—more in some places, to be sure, than in others, but throughout American culture. Especially among younger people, it is no longer socially normal for homosexuals to pretend to be heterosexual. And it turns out that the old slogan was right: Gays are indeed "everywhere," a small percentage of the population but sprinkled throughout society. Like heterosexuals, gay individuals turn out not to be reducible to the single fact of sexual orientation. They are a diverse lot and, much to the chagrin of both radical gays and traditionalist conservatives, many are bourgeois and conventional.

That human beings have many aspects to their personalities shouldn't come as a big shock. But when the subject is sex, many commentators take leave of their senses and forget everything they know about people. The only other subjects that make for dumber political discussions are religion and statistics and, at a much more subtle level, nature. This summer's debate dumped all these sense-impairing topics into one big mess.

It all started when Senate Majority Leader Trent Lott, pressed by conservative talk show host Armstrong Williams, condemned homosexual activity as a "sin." Having thus satisfied the persistent demands of both grassroots fundamentalists and intellectual neoconservatives, Lott immediately tried to soften the message by grasping the language of addiction and disease: "My father has a problem, as I said, with alcoholism. Other people have sex addiction. Other people, you know, are kleptomaniacs. I mean, there are all kinds of problems and addictions and difficulties and experiences of things that you—that are wrong but you should try to, you know, work with that person to learn to control that problem."

Not surprisingly, gays didn't like having a powerful politician cast them as the morally diseased equivalent of thieves and out-of-control drinkers. Collectively and individually, they protested. Lott's conservative fans fought back, mingling two different messages. First, they portrayed themselves as victims. They embraced the argument of the speech-code police that criticizing other people's views is unacceptable—"anti-Christian," in this case. Usually this claim took the form of decrying "name-calling" and demanding "tolerance" for anti-gay views, treating disagreement as the equivalent of censorship. In a ceremony at Lott's office, an obscure conservative group called Public Advocate of the U.S. took the argument to its absurd conclusion, delivering 50,000 petitions asking Congress to "designate the public practice and promotion of 'homosexuality' as a federal 'hate crime.'" So much for tolerance and free speech.

Second, and far more successfully, conservative groups produced stories, featured in full-page newspaper ads, of homosexuals who had adopted heterosexual lifestyles for religious reasons. Janet Folger of the Center for Reclaiming America, who coordinated the $200,000 campaign, told National Public Radio that the ads' message "shatters the foundation of the homosexual movement. That foundation of all of their arguments is based on the myth that homosexuals are born that way and change is impossible. If that was true, then thousands would not disprove that. And that's what they've done and that's what these ads show."

Well, not exactly. Folger's claim depends on using sex, religion, and statistics—and some ambiguous language—to fool the public.

Start with the numbers. America is a huge country: more than 260 million people. Take a quarter billion people and drop them on a bell curve, and you will find some of everything. Considered in this light, the claim of fundamentalist Christian groups to have produced real, honest-to-God homosexuals now living as heterosexuals is completely believable, even if you exclude the possibility that some of those "converts" are people whose sexual orientation is neither strongly homosexual nor strongly heterosexual but somewhere in the middle. The number of gay Americans is in the millions; even if only 1 percent of those people are motivated to exchange sexual satisfaction for family life or quiet consciences, you've still got tens of thousands of "ex-gays." And the ministries in question don't generally claim that many successes.

Folger's ads don't, therefore, say what she wants them to say. An ad featuring a single anecdote proves nothing about sexual orientation in general or the arguments of the "homosexual movement." Neither would an ad featuring thousands of anecdotes.

Besides, the interpretation of these stories is misleading. All those examples prove is that religious conviction can affect the tradeoffs people make in their lives, including tradeoffs outsiders find hard to fathom. (The histories of religious martyrs

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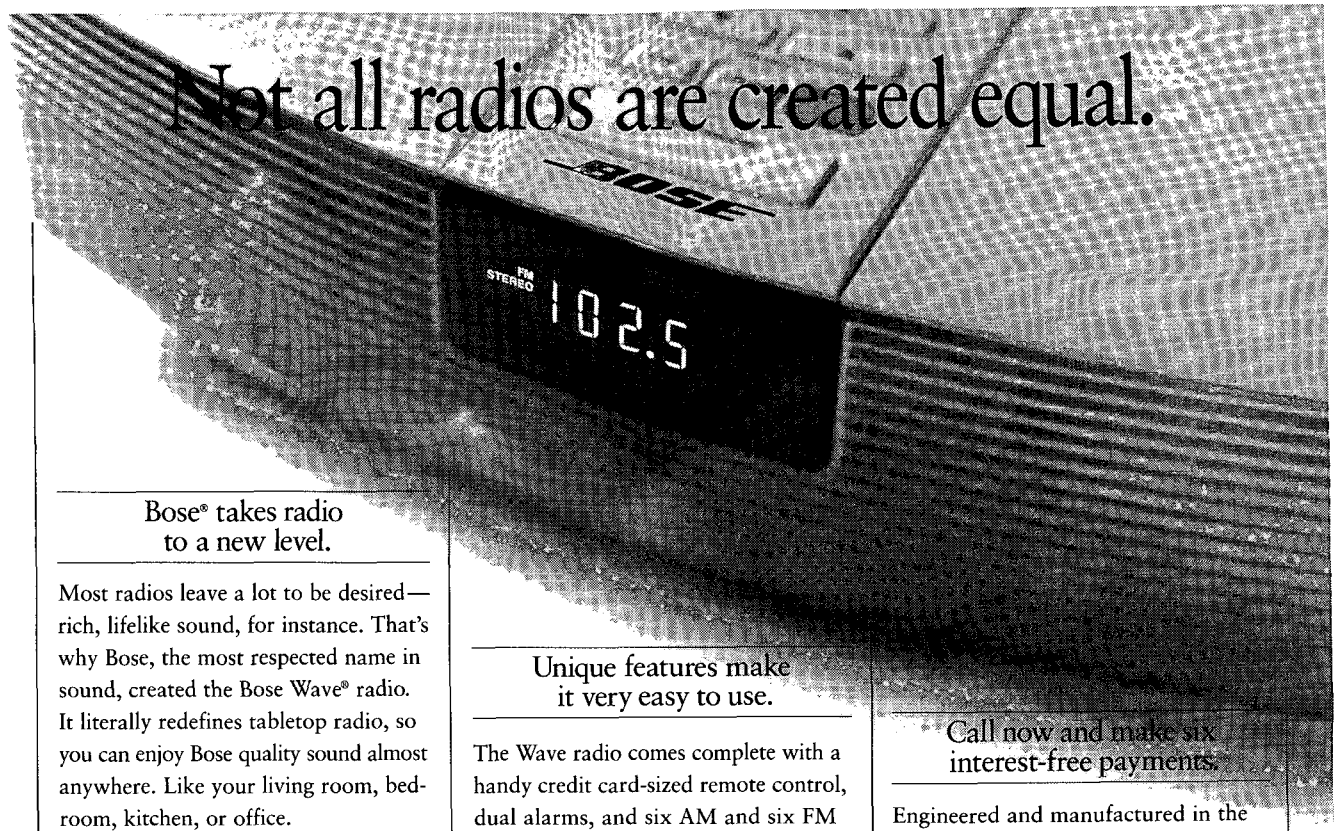

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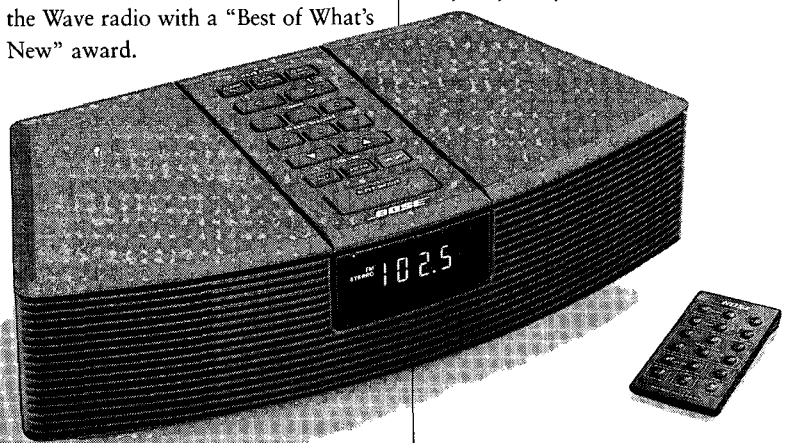

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are full of such tradeoffs. If you think celibacy is tough, try being burned at the stake.) As psychologist Patricia Hannigan sensibly told *Newsweek*, "If the foremost priority in one's life is religious faith, then personal happiness might come from conforming to faith rather than pursuing sexual orientation."

The slippery language also matters. The claim Folger calls a "myth" isn't refuted by her examples, because it is about inclination, not behavior. When Steve Forbes babbled on ABC that "a lot of people say you can overcome [homosexuality]. Some say you can't. The majority think you can overcome it," he was spouting nonsense. In fact, the consensus even among people who work in religious ministries to help gays live celibate or heterosexual lives is that sexual orientation is deeply rooted; erotic attraction almost never changes, only behavior does—and then only rarely.

Most people simply lack the conviction to engage in such self-sacrifice. It is easy enough to give up eating pork, a practice the Bible forbids, but even most American Jews don't do so, for the simple reason that most people see nothing wrong with that particular behavior. Love and intimacy are, needless to say, more important to a fulfilling life than unlimited menu choices. Folger's counterexamples say absolutely nothing about the many gays, both religious and irreligious, whose consciences are untroubled by their sexual feelings and who have no incentive to live lonely or frustrated lives. As a result, her anecdotes do nothing to counter the increased cultural tolerance that encourages homosexuals to accept their orientations and build responsible lives accordingly.

And there's the rub. This debate is not about a few people who believe God wants them to make certain sacrifices to conform to his will. It is about whether the choices of that minority should become the norm, enforced not just through religious persuasion (which works only on people who accept its premises) but through coercion. Pressed by Andrew Sullivan of *The New Republic*, Folger was forced to admit on *Nightline* that her political agenda includes support for sodomy laws that would imprison gays for having sexual relations. Her claim to speak for "tolerance" dissolved instantly.

Still, Folger's charge that the argument from nature is the linchpin of gay rights has some truth in it. And it has implications that reach far beyond the treatment of homosexuality.

To gain the sympathy of heterosexuals and claim the mantle of civil rights, gays have stressed again and again that their sexual orientation is innate, not a choice. It is like heterosexuality or, to take a once-stigmatized trait, left-handedness. It is like race or sex—something you're born with. This argument has worked well in the political arena. While a majority of Americans still call homosexuality a sin, a recent *Newsweek* poll found overwhelming support—upwards of three-quarters—for laws banning sexual-orientation discrimination in jobs or housing. Gays may be bad, the public seems to reason, but they can't help it, so it's wrong to pick on them.

Over the long run, however, the argument from nature is a trap. Left by itself, "we can't help it" leads to Lott's position and from there to Folger's. It goes straight back to the pre-1973 psychiatric view: Homosexuality may be a natural, biologically based condition, but so is disease. Kleptomaniacs can't help their inclinations. Neither can sex addicts or alcoholics. But we don't have to do what nature inclines us to. Diseases can be cured. Willpower, psychological support, and incentives can overcome, or at least dampen, these conditions. Hence, the friendly call for "recovery" programs and the not-so-friendly push for criminal sanctions.

In our "biological century," we are going to be confronted again and again with both the argument from nature and the claims of disease. The more we understand biology, the more we will see natural causes and potential "cures" for all sorts of human action. There is already evidence that much antisocial behavior—from violent sexual jealousy to serial killing—has a biological basis, as do such positive traits as nurturing one's children. Psychopharmacology demonstrates that we can alter personality by altering brain chemistry, and such interventions will become ever more possible as we unlock the genetic code. Although it is the great idol of those seeking a secular source of absolutes, nature alone cannot establish standards or norms. It cannot justify anything. It can only tell us what is, not what ought to be.

Appealing to nature can excuse terrible acts; conversely, it can stamp out individual identity in the name of curing disease. If we want a peaceful society in which a wide range of individuals can flourish, we'd better get used to evaluating behavior by its consequences, not its causes.

Ultimately, Trent Lott may have done gay rights a favor, by inadvertently clarifying the argument. What distinguishes homosexuality from kleptomania isn't that one is natural and the other isn't. It's that love and theft have dramatically different consequences. "To be able to live one's life loving and being loved by some other person is not something that is a disease," said Sullivan on *Nightline*. "It is the essence of what it is to be human, and that's what we're asking, the tolerance to be human and to be allowed to live our lives in peace." That humane, pluralist argument, not invocations of biological determinism, is what a confused public needs to hear.

Discovery Channels

In the marketplace, truth is always a hot commodity.

By Rick Henderson

The New Republic fires Associate Editor Stephen Glass after discovering he invented sources and subjects for more than two dozen stories he wrote for the magazine. *The Boston Globe* dismisses columnist Patricia Smith after finding out she also created fictional characters to deliver polemical messages in her "reporting" about life on the streets. CNN and *Time* make a dramatic public apology and retraction—and fire two producers—after jointly airing and publishing stories alleging that the U.S. military used nerve gas on American deserters in Vietnam.

Prestige press outlets have taken some serious body blows over the past few months. And media critics have quickly fingered the cause of these missteps: capitalism—or more precisely, the lust to capture readers and viewers in a hypercompetitive marketplace.

In the *Los Angeles Times*, former CBS and NBC reporter Marvin Kalb, now a professor at Harvard's Kennedy School of Government, blames "profit-centered, business-oriented news" and the "24-hour-a-day news cycle with nonstop demands for 'profitable news.' " In *Intellectualcapital.com*, media critic Eric Alterman faults the "culture of celebrity worship" and "the notion that the actual information in any given story is less important than the entertainment package it helps create." *Wired*'s Jon Katz complains that "the business of journalism has become dominated by large conglomerates whose only interest is profits, who have no ideology other than mass marketing."

Joseph Pulitzer and William Randolph Hearst must be cackling from their graves. A century ago, the two icons of contemporary prestige journalism drove the nation into a frenzy—and a war with Spain—with their sensationally exaggerated accounts of Spanish oppression in Cuba. Their goal was to sell newspapers with what became known as yellow journalism.

NEWS MAGAZINES
DO YOU WANT THE ONE THAT GOT IT WRONG, MADE IT UP, OR STOLE IT?
TIME
THE NEW REPUBLIC
BOSTON GLOBE
CINCINNATI ENQUIRER
IS THAT A BANANA IN YOUR POCKET?
CHIP BOK

From the colonial pamphleteers who fomented revolution against the British to the frontier editors who would publish any slander to sell papers (as recounted in Mark Twain's hilarious early story "Journalism in Tennessee"), "newspapermen" and broadcasters have always sought bigger audiences and fatter profits by offering information *and* entertainment.

The current controversies are different in one important way: The competitive processes of today's marketplace led to the rapid exposure and resolution of these journalistic shenanigans. Rather than denigrate capitalism and the search for profits, media critics should praise market processes for providing a public service. The desire to discover the truth, and to place reputation ahead of short-term notoriety, exposed all three frauds.

Glass's follies were made public by an editor for the online publication *Forbes Digital Tool*. Adam Penenberg covers technology companies, and when he read a story Glass wrote about young computer hackers working for high-tech firms, something seemed fishy. Penenberg discovered that a company described in the article didn't exist—and neither did the hackers. Penenberg then approached *TNR* Editor Charles Lane with this information, and after conducting his own investigation, Lane gave Glass the heave-ho.

Patricia Smith's fabrications were discovered internally, but the *Globe* wasted little time getting rid of her in a very public way before she could further damage the paper's credibility—and its bottom line. And when outraged veteran groups and skeptical military analysts flooded CNN and *Time* with questions about their story on nerve gas attacks in Vietnam, CNN—a relative newcomer in the media business—feared that its reputation as a source of news might be irreparably damaged. It hired respected First Amendment lawyer Floyd Abrams to check out the criticisms. Abrams found the story shabbily reported and concluded it should never have been aired.

CNN's Ted Turner announced the creation of an ombusdman-like office that will vet

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future investigative stories before the network airs them. But the controversy continues, primarily because CNN didn't fire correspondent Peter Arnett, and media watchdogs are still hounding CNN.

Not so long ago, most people got pretty much all their news from the big three networks and their local daily newspaper. It was a great system for those fortunate enough to land the few available jobs. And many who work in today's prestige media prefer the old regime. Now, laments Kalb, NBC and its cable outlets MSNBC and CNBC offer 27 hours of national news every day; most network affiliates add two to three additional hours of local news.

And that's just one media group: C-Span, CNN, Fox, PBS, NPR, all-news radio channels, radio talk shows, and Web pages that link to wire services offer plenty more viewing and listening options. These additional outlets serve as feedback mechanisms, constantly vying to offer more information, a different take on a story, a new angle that can clarify a complicated issue. There are more opportunities for enterprising journalists to build reputations for themselves and their publishers.

A 24-hour market now serves news junkies, and it offers a new set of challenges for those who provide information to the public. There's more time to fill, which places a premium on providing material worth watching. Channel- (and Web-) surfing audiences are fickle; they can easily go elsewhere if they feel they're not being informed or entertained.

But these peripatetic viewers are also less likely to accept what they see without question, especially when hundreds of alternatives bid for their time and attention. And there's actually more pressure on reporters and editors to be careful in verifying stories before airing or publishing them: If a media outlet gets something wrong, there are countless competitors eager to point out mistakes before their news-hungry audiences.

If Kalb, Alterman, and Katz were truly public-spirited, they would celebrate the current competitive atmosphere: The "nonstop demand for profitable news" encourages correction of error and dissemination of truth. The quest to maintain credibility leads media outlets to investigate their own work. In the marketplace, reputation is one major factor that separates prestigious institutions from fly-by-night operators and other fast-buck artists. Competitive forces have broken up the near-monopoly powers the big media providers once enjoyed. As with the end of any monopoly, consumers—in this case, news lovers—are the ultimate victors.

REASON NEWS

■ We introduce a new feature this month, Washington Editor Michael Lynch's "Capital Letters." Michael's frank e-mails about life in Washington were so insightful and amusing that we thought we should share them with REASON readers. This month's selection starts on page 23.

■ Want more REASON in your life? Subscribe to our free weekly e-newsletter, *Reason Express*. Written by Washington-based journalist Jeff A. Taylor, *Reason Express* features news, commentary, and Web links on the hottest topics of the week, plus great quotes and short bites. Sample back issues are available from *Reason Online* (www. reason.com). *Reason Express* comes in two editions—plain text, which can be read by any e-mail system, and HTML code, which allows people with the right software to click directly to the links in the text.

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■ REASON celebrates its 30th anniversary this year, with a special issue in December and a gala banquet November 12. We hope to see you there. See the ad on page 9 for details.

Come and celebrate
at the Reason Foundation's 1998 Gala Anniversary Banquet
Thursday, November 12, 1998
The Miramar Sheraton Hotel
Santa Monica, CA

Black Tie Optional

Reception 6:30 PM
Dinner 7:30 PM

Keynote address by ABC 20/20's John Stossel

Master of Ceremonies James Glassman
Washington Post columnist & American Enterprise Institute

Additional remarks by:

Frank Baxter
CEO, Jeffries & Company

Larry Elder
ABC Radio

Alex Kozinski
9th Circuit Court of Appeals

Stephen Goldsmith
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For additional information, please contact Erica Mannard at the Reason Foundation 310-391-2245
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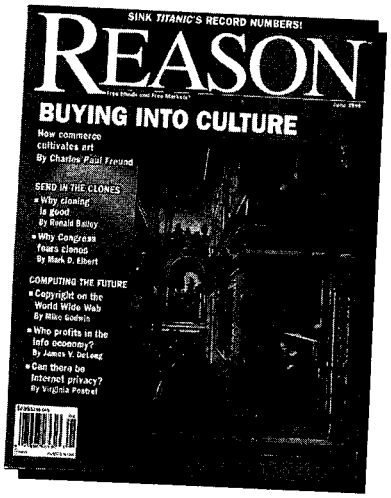
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BUYING INTO CULTURE
How commerce cultivates art
By Charles Paul Freund
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By Ronald Bailey
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COMPUTING THE FUTURE
• Copyright on the World Wide Web
By Mike Godwin
• Who profits in the info economy?
By James V. DeLong
• Can there be Internet privacy?
By Virginia Postrel

According to Plan?

The interview with Peter Gordon ("Plan Obsolescence," June) contains much I agree with. His choice of markets over planning is without flaw. In the interests of furthering market choices by home buyers, however, I would emphasize the cost of land as a big reason for the spread of suburbs.

Is it not mainly the high cost of land in urban centers that pushes folks to the suburbs? Is there not a significant cost difference for building a given house? Good schools, clean air, and desire for space are surely factors. But in my view, the cost factor dominates.

As for the claim that commute times have hardly changed over the past 15 years, Professor Gordon may wish to check out I-80 and I-680 in my neck of the woods.

George Amberg
El Cerrito, CA

While thought-provoking, "Plan Obsolescence" was disappointing in its handling of statistics. The article states that Los Angeles "has the highest population density of any major metropolitan area" without identifying the source of that assertion. By whose measure is the population density of Los Angeles greater than that of New York City? Indeed, it is not clear whether that is Mr. Gordon's assessment or was one your interviewers took from an independent source.

More egregiously, the "calculation" determining that over the past decade the Los Angeles transit system has incurred a cost of "$7.00 for every transit rider eliminated" went unchallenged. The absurdity of that pseudo-statistic is easily demonstrated: If ridership had fallen by one-tenth that amount, the cost would have been $70 per rider lost; if ridership had fallen by only one, the cost would have been $7 billion per rider lost. The problem, of course, is that money is being spent not to lose riders, but to retain them; the salient statistic is an estimate of how many riders would have been lost if no additional money had been spent, spreading the costs incurred over that number. (Even then, that statistic would ignore the fact that retaining riders may not be the only purpose for making the expenditures.)

Should we take the cost of an immunization program, divide by the number of cases that occur nonetheless, and decry the huge cost per case not prevented? Should we divide the cost of highway improvements and maintenance (tens if not hundreds of billions per year) by the number of highway fatalities, and decry the high cost per fatality (probably in excess of $1 million per fatality)?

To the categories of lies, damn lies, and statistics, perhaps we should add pseudo-statistics.

Kenneth B. Povodator
Fairfield, CT

Peter Gordon replies: George Amberg is correct. Supply and demand surely matter in the determination of land prices. As the costs of traversing distances fall, and as more sites become accessible, we have more supply and lower prices. Office space rents in central Mumbai (Bombay) are quite high because the supply is low and new sites do not come easily available where infrastructure is poor and where development is hampered. U.S. cities also have their supply-side problems but the effects of new communications technologies in opening up new sites, making more industry "footloose," are dramatic. More firms and more households now can choose cheaper sites without paying an access penalty.

With respect to Kenneth Povadator's concerns, the population densities alluded to are from the Census Bureau's Urbanized Area statistics (1990): 5,800 people per square mile in L.A.; 5,408 people per square mile for New York. This is not Manhattan vs. downtown L.A.; rather, it is a comparison of functional urbanized areas (when you fly in at night, where the lights start).

With respect to transit, causation is of course always tricky but I will stick to my story. While the population of L.A. County grew by 12 percent over the past decade, with many of these new arrivals immigrants, public transit lost about 1 billion boardings as it spent $7 billion on new capacity—which was sold as a way to more than triple ridership! What went wrong? The bus system was bled to pay for rail. More rail, fewer buses, less transit use.

Memory Gaps

In "Thanks for the Memories" (June), Walter Olson mocks two passages from an affidavit I filed in asbestos litigation in Corpus Christi, supporting the propriety of the Baron & Budd law firm's use of detailed work history sheets to prepare their plaintiff clients to testify. Since Olson and I agree that it is morally and legally wrong

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Los Angeles, CA 90034-6064

for a lawyer to counsel or assist a witness to testify falsely, our disagreement must lie either in our understanding of what really happened, or in our interpretation of what I wrote.

Mr. Olson first quotes me as saying, flatly, that there was "nothing improper or unethical" in the firm's use of the so-called "Preparing for Your Deposition" document. What I actually said was that use of the document was fine, *in light of the fact that clients were contemporaneously shown another document—a document that stressed telling the truth throughout, and gave over 30 examples of what it means to testify truthfully and accurately.* Ironically, this second document was a photocopy of an article from "For the Defense," a publication of the insurance defense bar.

The second passage from my affidavit was quoted verbatim and without omission. It is appropriate, I said, "for a lawyer to instruct his client how to answer questions in accordance with the truth that will best serve his case." Apparently, Olson read this as a cynical nod or wink in favor of the cynical proposition that there are some "truths" that are "better" than others, and that witnesses are free to choose one of those, rather than "the" (actual) truth.

That is not an outlandish reading, but it is wrong. With virtually no time even for proofreading as we hustled off to court last October, I did not catch the punctuation error that I hereby correct by adding two commas to set off the intended parenthetical clause. It is appropriate, I should have written, "for a lawyer to instruct his client how to answer questions, in accordance with the truth, that will best serve his case." There is only one truth, Walter Olson and I agree, but there are good and not so good ways to answer questions about it.

W. William Hodes
Indianapolis, IN

Walter Olson replies: I'm glad to find Professor Hodes agreeing with me that there's an objective difference between truth and falsity and that it's wrong for lawyers to coach false testimony, but am more mystified than ever that he finds those principles consistent with his con-

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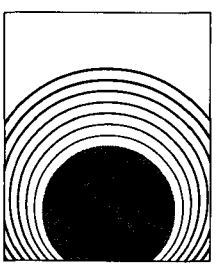

tinued defense of the Baron firm. To recap: That firm has admitted it gave many clients the now-notorious 20-page memo packed with detail about what "your Baron & Budd lawyer" needs for you to testify ("It is important to maintain that you NEVER saw any labels on asbestos products that said WARNING or DANGER"). Defending itself against the scrutiny that followed these revelations, the firm has asserted that it also routinely gave clients a copy of a standard short article on depositions which says everyone should tell the truth under oath. Professor Hodes apparently views this second item as somehow canceling out the detailed instructions in the longer memo—much as if a deranged mullah, after issuing his followers plans for blowing up the World Trade Center, had sought to dodge responsibility by pointing out that he had also given them copies of the Koran, a book that includes passages enjoining wanton violence.

You could call Baron & Budd's argument on this point a fig leaf, except that fig leaves at least cover something. The 20-page memo, whose contents were specifically tailored to asbestos testimony, was filled with capital letters and vivid phrases on the need to memorize various tricky points and wait on others for cues from "your Baron & Budd lawyer" on what to remember. The second document, shortish, impersonal, and civics-textbooky, could hardly convey an urgent tone of solicitation; and as it happens, was clearly a record of the advice given by defense lawyers—in short, by the opposition in the lawsuit! If we are to read messages into the act of handing a plaintiff a pro–truth-telling reprint from "For the Defense," the message might easily be: "...and here's what the other side would prefer for people like you to do." I would not select the word *ironically* here.

Turning to the second passage, we might follow Hodes's explication of the last-quoted sentence and construe "in accordance with the truth" as a parenthetical clause. But notice that the rest of the sentence then falls short of sense. What can it mean "for a lawyer to instruct his client how to answer questions...that will best serve his case"? I suppose we're meant to restore sense by mentally inserting some entirely new phrase into the ellipsis, such as "...in ways..." It does seem to me, however, that affidavits signed by law professors shouldn't require so much parsing and sympathetic revision to be nudged into a state of ethical coherence.

Social Responsibility

According to Brian Doherty, social forces play little, if any, role in shaping human behavior, and to declare so is merely an excuse for activist government ("Blame Society First," June). If this is true, however, then we are driven to the absurd conclusion that the explanation for the recent school massacres (Mr. Doherty's example) lies solely within the individuals who commit such acts.

Teenagers who kill do not create themselves ex nihilo. They are entirely the product of their genetic endowment, their family upbringing, and the local community and larger society which surround them. To think otherwise is to imagine that there is some independent, self-constructing force within each individual, for which there is simply no scientific evidence, commonsense appeals to "free will" notwithstanding.

Doherty is driven by the libertarian ideology of personal autonomy into denying the obvious: that teen shootings are made more likely by a host of factors, including the availability of guns, increasingly violent media images, and declining support for counseling services in schools. The reason that only a few teens end up actually killing is explained not by appealing to some self-generated fault but by analyzing the rare but deadly interaction of inherited dispositions, family dynamics, peer influences, and cultural messages.

Some, like Doherty, worry that such explanations undercut moral accountability. But knowing exactly why people behave the way they do doesn't obviate judgments of good and bad, nor does it undercut justifications for sanctions against individuals who transgress. After all, we still must protect society, incapacitate offenders, rehabilitate them when possible, and deter those with criminal intent. As criminologist James Q. Wilson remarks in his book *Moral Judgment*, "Nor is the reason we assign responsibility for...actions that the law rests, of necessity, on a convenient fiction, that of free will, and could not operate if it did not embrace that myth. A legal system and the society it sustains could not long endure if they depended, at their root, on mere fiction."

Doherty says that "real change is both needed and possible—in the choices individuals make," but such choices will change for the better only if the conditions which produce them change first.

Thomas W. Clark
Research Associate
Health and Addictions Research Inc.
Boston, MA

Brian Doherty replies: If Mr. Clark can actually, through the magic of "analyzing the rare but deadly interaction of inherited dispositions, family dynamics, peer influences, and cultural messages," come up with a rigorous science that can explain and predict human behavior that has no room for the most basic reality that human beings can choose what to do at any given moment, he will have done something that no sociologist has ever done, or, I maintain, ever can do, Isaac Asimov's Hari Seldon aside.

Mr. Clark of "Health and Addiction Research Inc." is one of the "experts" I discussed in my editorial, who refuse to acknowledge choice's role in human affairs because it lessens the value of the complicated "weighing of factors" they indulge in while ignoring the factor that makes the ultimate difference in what behavior an individual human actually engages in. I do not deny that certain human choices are made more likely by a variety of environmental factors; I do deny that those factors in and of themselves, with no recourse to human choice, can come to a final and predictable explanation of what behaviors humans will and won't commit.

CORRECTION
In the book review "Taking It To The Streets" (June), 19th-century abolitionist Sen. Charles Sumner was incorrectly identified as William Graham Sumner.

Landmark Legal Foundation

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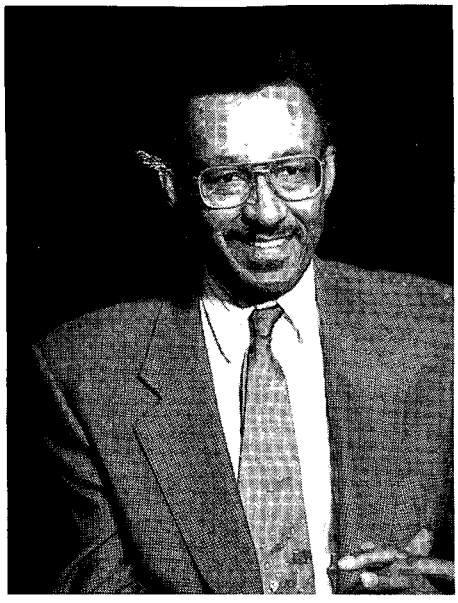

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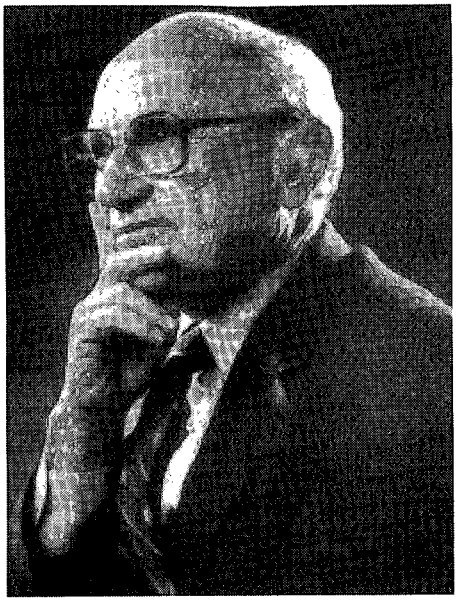

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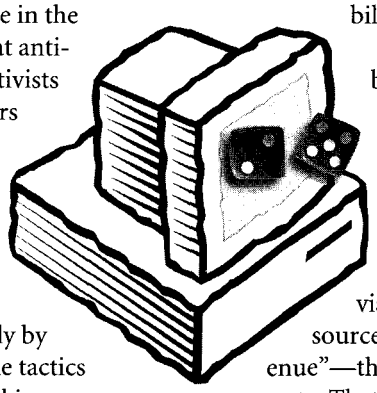
High Stakes

By Abe Crystal

The war on Internet gambling proceeds on several fronts. At the federal level, the Internet Gambling Prohibition Act, championed by Sen. Jon Kyl (R-Ariz.), passed the Senate as an amendment to an appropriations bill by a 90–10 vote in August. But the legislative clock may run out before a bill gets to President Clinton's desk this year. Companion bills haven't reached the House floor and aren't scheduled for a vote. (See "Bet Noire," December 1997.)

Bernie Horn, political director of the National Coalition Against Legalized Gambling, says anti-gambling activists "are in the position that anti-smoking activists were 30 years ago." He expects gambling opponents will succeed more rapidly by adopting the tactics of anti-smoking groups, particularly by emphasizing gambling as a public health problem fueled by "compulsive gamblers." Demonizing casinos and other gambling outlets is likely to be part of the plan as well.



As with tobacco, the states want a larger role in regulating the vice. Indiana Attorney General Jeff Modissett has sent a cease-and-desist letter to the Internet gambling service Rolling Good Times On-Line (www.rgtonline.com), saying, "If you are promoting or conducting gambling operations with Indiana residents, I demand that you cease these activities immediately." Missouri and Minnesota similarly claim jurisdiction over out-of-state companies, citing the federal Wire Communications Act, which prohibits the transmission of gambling information over telephone wires.

Meanwhile, the Pennsylvania legislature is considering a bill that would make the very act of betting by computer illegal. Another bill would prohibit only the "business of betting," targeting "virtual casinos." To enforce this law effectively, Pennsylvania authorities would need to prosecute companies in other states or perhaps in other countries, potentially violating the U.S. Constitution's Commerce Clause. At press time, hearings were being held on both bills.

This war on betting won't end anytime soon, since states are determined to "create and ensure the viability of a source of state revenue"—the lotteries they operate. That assessment came not from a free market think tank but from U.S. Assistant Deputy Attorney General Kevin V. DiGregory, in testimony before Congress earlier this year.

Nicotine Buzz

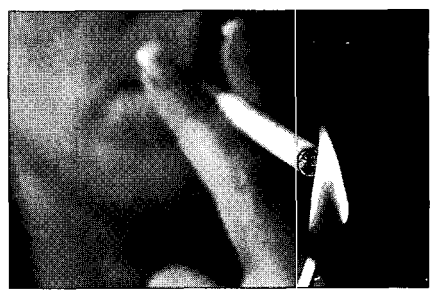
By Jacob Sullum

According to a study published in the June 25 issue of *Nature*, some smokers carry a gene that impairs their ability to metabolize nicotine. According to studies published in the July 8 issue of *The Journal of the American Medical Association*, black smokers absorb more nicotine per cigarette than white smokers.

Both groups tend to light up less often, apparently for the same reason: Nicotine stays in their bloodstreams longer. Yet in newspaper coverage of the studies, the smokers with the defective gene were said to be especially resistant to nicotine addiction, while black smokers were said to be especially vulnerable.

The contradiction seemed to hinge on different definitions of addiction. In the *Nature* study, the researchers viewed smokers who metabolized nicotine inefficiently as less prone to addiction because they smoked less often. In the *JAMA* studies, the researchers began with the assumption that black smokers are more prone to addiction, despite the fact that they smoke less often, because previous research had indicated that blacks have a harder time quitting than whites.

One of the *JAMA* studies concluded that "higher nicotine intake...may help ex-



Balance Sheet

By Rick Henderson

ASSETS

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▲ Healthy Trade. Biotech research may doom the U.S.-Cuba trade embargo. SmithKline Beecham plans to test a breakthrough vaccine for group B meningitis developed in Cuba—if the U.S. government will grant a waiver of the embargo. If the waiver goes through, other American companies may try to test AIDS and cholera treatments developed on the island.

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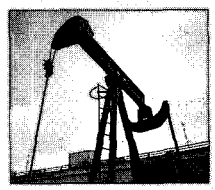
▲ Private Possibilities. The distinction between public and private gets a boost in the courtroom, as the "Yale Five" lose. (See "For Heaven's Sake," December.) The Orthodox Jewish students sued the university rather than face the prospect of living in coed dorms. U.S. District Judge Alfred Covello is not amused. "The plaintiffs could have opted to attend a different college or university if they were not satisfied with Yale's housing policy," Covello rules.

△

▲ Cartel, Schmartel. Keep those Whip Inflation Now buttons in storage. Reports that OPEC nations plan to cut oil production and raise prices look like hooey. The International Energy Agency predicts crude prices will fall for at least another year, fueled by the Asian recession and the eagerness of exporting countries to undercut their rivals.



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▲ Continental Air. The German government begins to privatize all its airports. Berlin accepts bids for the operation of its three existing airports; the new Berlin-Brandenburg International Airport will be privately financed and run. The federal government also plans to divest its holdings of airports in Frankfurt, Cologne-Bonn, and Munich.

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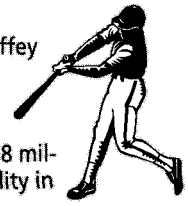

▼ **Pacific Palace.** As Seattle Mariner Ken Griffey Jr. chases Roger Maris's home run record, the Mariners' new ballpark reaches an unsavory mark: The yet-to-be-completed, 45,000-seat, retractable-roof stadium will cost at least $498 million, making it the most expensive sports facility in the nation's history.

▼ **Shanghaied.** Promoting freedom online remains dangerous in China. Shanghai officials arrest Lin Hai, a 30-year-old computer engineer who sent 30,000 e-mail addresses to an Internet-based human rights mailing list in the United States. If convicted, Lin, who is charged with "inciting the overthrow of state power," faces a five-year prison term.

▼ **Minor Attraction.** The Federal Trade Commission accelerates its thought-police–like campaign to protect "kids" from booze. The agency forces TV ads for Beck's Beer and Kahlua White Russians off the air: The beer ad shows people enjoying themselves on a boat, and the Kahlua ad claims (correctly) that its premixed cocktail is low in alcohol. The FTC threatens action against eight other alcohol makers for using actors who look "too young."

▼ **Mission Scrubbed.** The prospects for floating industrial parks dim temporarily as the Department of State halts the Sea Launch offshore commercial satellite program. (See "New Waterworld Order," November.) The government put the brakes on Sea Launch because of concerns that Boeing, the project's main U.S. backer, may have shared sensitive satellite information with China.

LIABILITIES

plain why blacks find it harder to quit." Although the reasoning behind that suggestion was not spelled out, the point was emphasized in newspaper reports, appearing in the first or second sentence of stories in *The New York Times*, *The Washington Post*, *USA Today*, and *The Boston Globe*.

"Keeping nicotine in the body longer could enhance smoking's pleasurable effects," the *Post* speculated, thereby making it more addictive. But two weeks before, when the *Post* reported on the *Nature* study, "keeping nicotine in the body longer" was supposed to make smoking *less* addictive. In fact, the authors of the study suggested that interfering with the breakdown of nicotine "may be a new way to help prevent and treat tobacco smoking."

Dead Air

By Jason Brooks

Washington's policy makers are again debating whether to force broadcasters to give free air time to political candidates. But before issuing any new mandates, federal regulators could learn plenty of lessons from the Golden State.

California's June primaries featured deep-pocketed Democratic gubernatorial candidates Al Checchi and Jane Harman and some fiercely fought initiative campaigns. Even so, some candidates literally couldn't buy their way onto radio or television. One reason may well be existing federal regulations that force stations to sell political ads at rock-bottom prices.

The Federal Communications Commission forces broadcasters to charge candidates the same low rates they charge to their highest-volume advertisers. When a station sells time to one candidate, it is legally obligated to offer equal time to every other candidate in that race.

"In San Francisco, all the major television and radio stations made a decision not to sell time to most state and local candidates," says Mike Marshall, campaign manager for Delaine Eastin, the state's superintendent of public instruction. The Eastin campaign was unable to purchase air time in San Francisco. Marshall says Eastin was prepared to pay higher prices for air time, but was prohibited from doing so by the same FCC regulations.

The obvious answer seems to be lifting the price controls. The shortage should ▶

QUOTES

"To be blunt about it, the tobacco industry has murdered millions of people. Morally, it is just as guilty as Adolf Hitler."
—Syndicated columnist Molly Ivins

"To even think that you could approach sociological issues—such as how to take the good life and spread it to the rest of the world—by analyzing individuals is ridiculous."
—Syracuse University sociologist Allen Mazur, quoted in *Newsweek*

"Whenever I read a piece in a magazine making a libertarian argument on a social issue, I'm always sure of one thing: The author has no daughters....Personal freedom is a fine thing, but not for those who have any contact whatsoever with my two personal hostages to fortune."
—Blake Hurst, in the July/August issue of *The American Enterprise*

"When it comes to technology issues, governments' goals are not the same as the goals for business. Government wants to create jobs and exports—business wants to cut its costs and stay flexible and competitive. You can't let governments make these decisions."
—Former Federal Communications Commission Chairman Reed Hundt, speaking to a June technology conference in Singapore

BRICKBATS

◆ The Supreme Court let stand a judgment against Abe Pollin, owner of Washington, D.C.'s NBA Wizards, NHL Capitals, and the MCI Centre in which the teams play. Pollin had been sued by a group of handicapped people who argued that the Americans with Disabilities Act not only required Pollin to provide wheelchair spaces in the arena, it also mandated that people occupying those spaces have a clear line of sight even if the people in front of them stood up. Pollin argued that such a mandate would require him to leave 368 seats permanently unsold to prevent the possibility that someone might stand up and block the view of a wheelchair user. The justices apparently thought that didn't matter.

◆ Speaking of intellectual firepower, Sylvester Stallone recently showed that he's shooting blanks. The star of those paeans to pacifism *Rambo* and *Cobra* said that gun ownership in America is "going to lead to, I think, urban warfare." The alleged actor then said authorities might have to go door to door confiscating weapons.

◆ One grade school in Mishawaka, Indiana, has a strict no tolerance rule—on puppy love. Elm Road School has banned hand holding, note passing, chasing members of the opposite sex during recess, and any talk of affection. The rule should help boys and girls learn to treat each other with respect, courtesy, and a certain icy distance.

Chip Bok

then disappear in much the same way Jimmy Carter's gas lines vanished during the Reagan years. But many in Washington prefer to impose new controls. President Clinton and FCC Chairman William Kennard want to force stations to give candidates free air time. A commission spearheaded by Vice President Al Gore is examining the issue, and the FCC is scheduled to launch its own inquiry sometime this year. (See "The Broadcast Giveaway," April.)

And no one seems more eager to give away free broadcast time than the print media. *The Hill*, a Capitol Hill newspaper, recently condemned broadcasters for "rationing" air time, and called on legislators to make advertising free. "The First Amendment means nothing if a candidate cannot deliver his messages," said a June 17 editorial.

But why should broadcasters be the only media outlets forced to give away advertising? If this "First Amendment" principle is so important, perhaps *The Hill* and its brethren in the print media should be forced to donate space to candidates.

I'll Take That

By Abe Crystal

When the State of New Jersey confiscated her car in 1995, Lois McDermott got mad. Then she decided to get even.

McDermott's son Jackie used her 1990 Honda Accord —against her wishes—to transport and sell heroin and to assault and escape from a police officer. After Jackie pleaded guilty, the state moved to seize the vehicle. McDermott challenged the forfeiture, which was ordered after a summary hearing, as a violation of her right to a jury trial. An appeals court agreed, and so did the state Supreme Court, which ordered jury trials for all cases of forfeiture involving innocent property (i.e., noncontraband).

State attorneys framed the issue as a classic battle between individual liberty and government oppression—and demanded that government oppression triumph. They even compared themselves to the English tax collectors of colonial times, and McDermott to Patrick Henry. Wrote the court, "doubtless, the right to trial by jury will be an inconvenience to the State when it seeks to forfeit innocent

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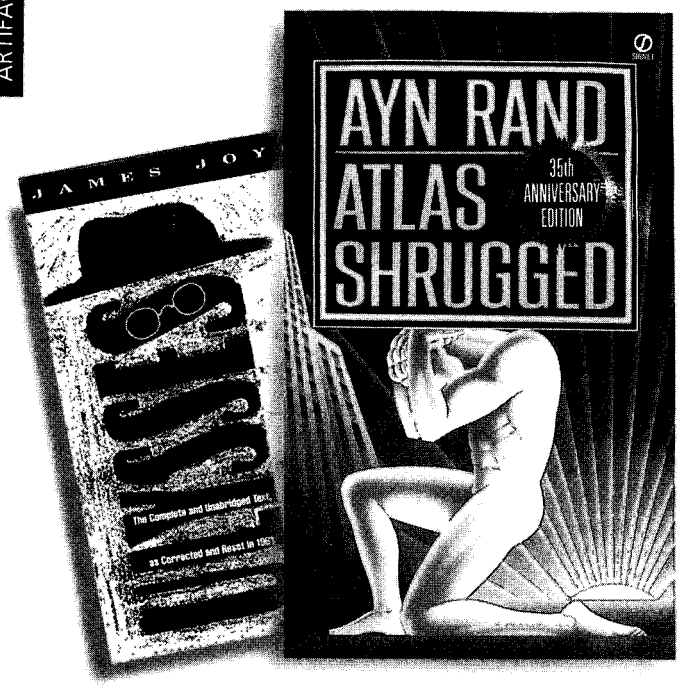

Netbrow

Quick, what's the century's greatest English-language novel? The Modern Library chose James Joyce's *Ulysses* this summer to crown its list of the 100 best such novels; Joyce was followed by a cascade of Faulkners, Conrads, Fitzgeralds, and others whose work illustrates modernism's discontents. Naturally, this list was accused of being too male, too American, too old, and too highbrow.

But The Modern Library also hosted an alternative list on its Web site (www.randomhouse.com/modernlibrary/100best/), one open to everybody's votes. The results weren't scientific, but they seemed to reflect a body of taste, one that *The New York Times* cleverly labeled "netbrow." At the least, the readers' list reflected a vastly different vision of the concluding century.

Ayn Rand's *Atlas Shrugged* won the poll (three other Rand books made the list); its most serious challenge came from Frank Herbert's *Dune*. Joyce, Fitzgerald, and other classic authors were present, but what marked the readers' choices were authors nearly unknown to the literary establishment: Charles De Lint, Charles Portis, and Alison Spedding, among others.

Here are books that deal in imagination, pleasure, possibility, and ideas. Invited to make their choice, readers cited work, good and bad, that expanded their own choices. If "netbrow" is an emerging taste class, this list marks a notable stage in self-definition.

—Charles Paul Freund

property. Mere inconvenience, however, cannot justify the denial of a constitutional right."

With no appeals remaining, the state will just have to live with that inconvenience. Says Elizabeth Macron, McDermott's attorney, "it'll keep 'em honest."

Can't Bear It

By Jacob Sullum

"More and more people—including responsible gun owners—want to see some reasonable gun control," says Sen. Carol Moseley-Braun. But her idea of what's reasonable may not be shared by responsible gun owners.

The Illinois Democrat is running for re-election against a Republican state senator who says law-abiding citizens should be allowed to carry handguns if they undergo 50 hours of firearms training. In response, Moseley-Braun has been bragging about her cosponsorship of the Concealed Weapons Prohibition Act.

Introduced last year by Sen. Frank Lautenberg (D-N.J.), the act would override the laws of 31 states that allow citizens who meet certain objective criteria—typically, passing a criminal background check and completing a training course—to carry handguns. Lautenberg's bill recognizes a few privileged categories, including cops and security guards; anyone else seeking a carry permit would have to demonstrate "compelling circumstances."

Despite decades of experience with liberal permit laws, there is scant evidence to support the bill's assertion that "the public carrying of handguns increases the level of gun violence by enabling the rapid escalation of otherwise minor conflicts into deadly shootings." As University of Chicago economist John R. Lott shows in his new book *More Guns, Less Crime*, "right-to-carry" laws are not associated with increases in violence. If anything, he argues, allowing law-abiding citizens to carry guns helps deter crime.

But Moseley-Braun does not seem particularly concerned about the actual consequences of right-to-carry laws. "One would think that after the recent tragedies involving shootings at schools in Arkansas and Oregon," she said in July, "it would be clear that the last thing we need is legislation allowing people to carry concealed weapons in public places."

It's hard to understand the connection, since the accused shooters in these attacks did not have handgun permits. Even if they did, carrying firearms onto school grounds still would have been illegal. Finally, the main weapons involved were rifles, not handguns.

Pediatric Politics

By Jason Brooks

A program Congress sold as a way to provide flexible private insurance to children is quickly becoming a way to hook more middle-class families on government health care.

In 1997, Congress passed the State Children's Health Insurance Program, popularly known as KidCare.

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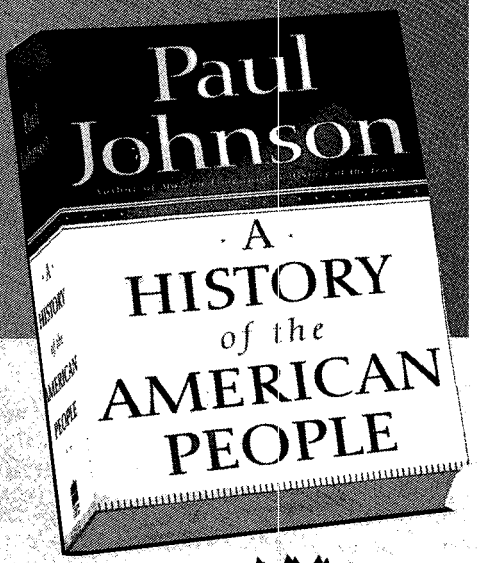

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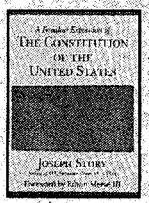

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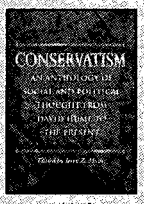

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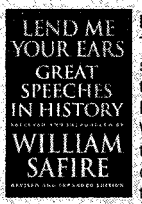

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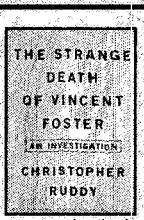

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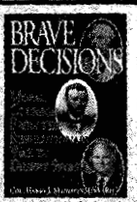

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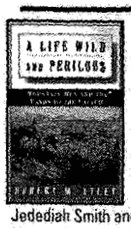

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BRICKBATS

♦ Graham Knowland paid his 1996 taxes. He has the canceled check to prove it. The IRS doesn't dispute that fact, but it has tagged him as a tax evader and wants to force him to pay the taxes again. Here's what happened. Knowland sent his return in with a check. The IRS cashed the check. Knowland's bank transferred funds to the IRS's bank. Then either that bank didn't put the funds in the IRS account, or the IRS didn't credit it. Either way, they're holding Knowland responsible. So it's pay up again, or pay the penalty.

♦ David Ripley is an anti-abortion activist who has raised thousands of dollars for his cause. Apparently, that has left him too busy to attend to other matters, such as paying court-ordered child support for his 9-year-old daughter. Ripley says he's not delinquent, but court records in Idaho show that he hasn't paid for nearly three years.

♦ In Florida, a Coast Guard commander has made Hooters restaurants off limits for officers in uniform. J.D. Arndt says that the restaurants aren't in line with the Coast Guard's values. I guess the sailors will have to find entertainment in more traditional haunts, such as nudie bars and honky tonks.

♦ Finally, the state of Tennessee has apologized for putting the Rivergate Church of Christ and the Grace Community Church on a list of street gangs. The state blamed faulty information from local police.

—Charles Oliver

Scott Stantis

THIS IS YOUR BRAIN
THIS IS THE WAR ON DRUGS
THIS IS YOUR BRAIN AFTER SPENDING ANOTHER BILLION DOLLARS ON THE WAR ON DRUGS
BASH BASH BASH BASH
ANY QUESTIONS?
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$48 billion over 10 years to provide health insurance to children of the working poor. KidCare's promoters claimed that flexible block grants would allow states to experiment with market-driven health care systems, such as insurance vouchers or tax credits. One year after the program's adoption, however, there's little innovation and a lot more government.

So far, 21 state KidCare plans have been approved, and all would expand Medicaid or a similar, state-run program. This isn't surprising, since states qualify for more federal money if they expand Medicaid, while they may lose subsidies if they establish new programs.

While Medicaid traditionally serves the poor, the new rules say children younger than 19 who live in families with incomes that exceed 200 percent of the poverty line—$32,900 for a family of four—may qualify for Medicaid. As a result, the families in this income range who currently purchase private insurance will face strong incentives to obtain tax-subsidized health coverage.

A study in the journal *Health Affairs* that examines recent Medicaid expansions suggests that for every two persons added to the Medicaid rolls, one person will drop private health insurance. KidCare could push millions of children out of the private health market.

John Hood, president of the North Carolina–based John Locke Foundation, reports that pro-KidCare lobbyist Adam Searing of the Health Access Coalition conceded that the program will prompt families to drop private insurance. "The long-term effect" of the program, says Hood, "may very well be to eliminate private coverage for children [from families with incomes less than] 200 percent above the poverty line."

Dirty Dancing

By Michael W. Lynch

In late June, the Wisconsin Supreme Court ruled unanimously that the First Amendment protected a person's right to publicly poop on the American flag. In the same month, it cited the First Amendment in striking down a law that prohibited nude dancing. But the First Amendment will be no defense when you call a politician a liberal, if the Badger State's attorney general gets his way.

The Wisconsin Elections Board is suing Wisconsin

Manufacturers and Commerce, the state's largest business advocacy group, for a series of radio, print, and television ads that, among other things, claimed one candidate seeking re-election never "met a tax he didn't like" and called another a "liberal." (See "Just Shut Up," Citings, January, and "The Summer of Reform," Citings, August/September.)

Although the board's own attorney advised that the ads were not actionable under long-established legal precedents, the board decided to fine the WMC anyway. The parties were soon in state court, and the case was dismissed.

But the speech police haven't given up. Appealing the decision, state Attorney General James Doyle argues that political speech standards, like obscenity standards, should be developed "on a case-by case basis. If a state law that regulates obscene material is" constitutional, reasons Doyle, "then states can apply the standard [to political speech]."

Not likely. There's little dispute among constitutional scholars that the First Amendment offers sweeping protections for political speech, especially messages directed at government officials. And the U.S. Supreme Court considers speech obscene (and therefore illegal) only if it is determined to have no "significant scientific, literary, artistic or political value."

SOUNDBITE

Does America Hate Its HMOs?

By Michael W. Lynch

Conventional wisdom in Washington holds that Americans are angry about managed health care and want the government to do something about it. But when American Enterprise Institute Fellow Karlyn Bowman examined public polling data, she found Americans to be content with their own managed care plans.

Upwards of 80 percent of Americans in managed care are satisfied with the quality of their care, their ability to get appointments, and their access to specialists, according to Roper and ABC polls. And it's not just the healthy who are happy. One ABC poll found 88 percent of people who suffered, or had a family member who suffered, a serious injury or illness were satisfied with the care they received. More revealing, 79 percent of those polled by ABC said they would recommend their plan. Yet for all their personal satisfaction, Americans still seem to feel that there's something wrong with managed care. A Princeton Survey Research Associates poll found that when asked to ponder managed care in general, most Americans say HMOs have generally restricted access to specialists and decreased the quality of health care.

Karlyn Bowman discussed the data with Washington Editor Michael W. Lynch.

Q: There seems to be an "I hate Congress but love my congressman" phenomenon. Now it seems people dislike HMOs in general but like the HMO they're enrolled in.

A: This is true in many areas. We think race relations in the nation have enormous problems, but we think race relations in our own communities are pretty sound. We're worried about the moral fiber of the country as a whole, but we're not worried about the moral fiber of our community. I tend to trust and put most emphasis on what people are saying about their own circumstances. And that tends to be very positive in managed care, even from those people who have been sick.

Q: Politicians seem to think there is support for more government regulation of health care. What do the data show?

A: People seem to like the idea of a quasi-governmental agency, something like the Securities and Exchange Commission or the Federal Reserve [to keep tabs on managed care providers]. They don't want Washington directly involved in health decisions, but they think government must play an oversight role. They also want government to provide care for those who can't afford it. They just don't want a governmental role that would make their care more expensive.

Q: What are the chief concerns of Americans when it comes to health care?

A: Cost, cost, cost. Cost is first, cost is second, cost is third. It swamps all other concerns.

Painful Reminder

By Jacob Sullum

A recent study of elderly cancer patients confirms that the undertreatment of pain remains a common problem, despite repeated calls for improvement during the last two decades. (See "No Relief in Sight," January 1997.)

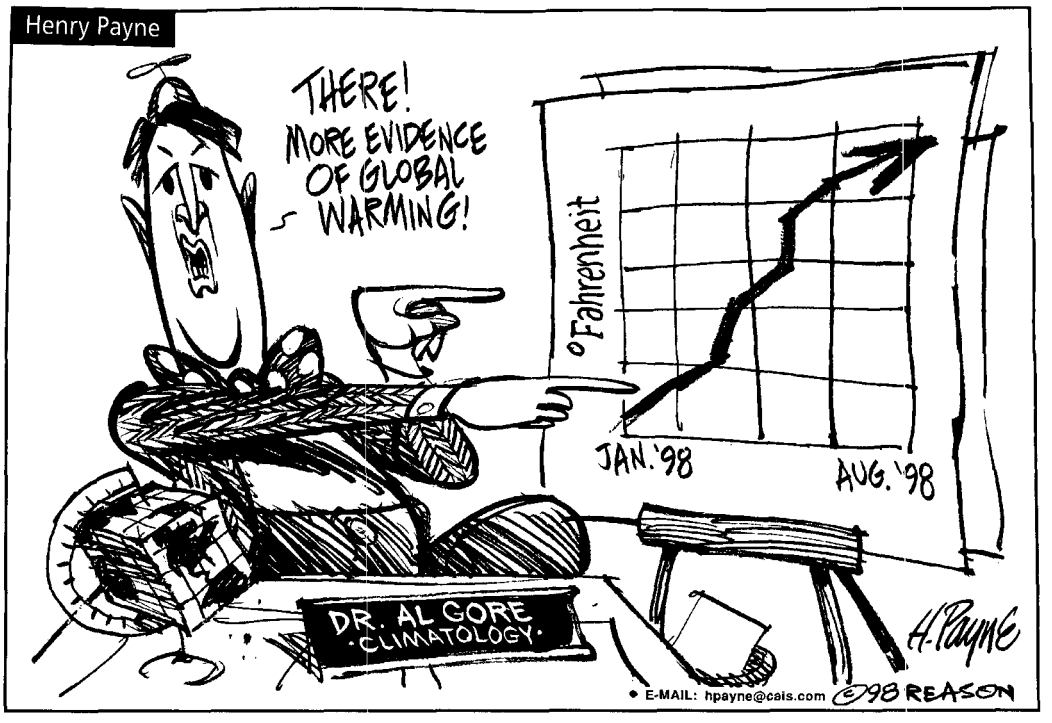
By observing and interviewing 13,625 cancer patients in nearly 1,500 U.S. nursing homes, researchers identified about 4,000 who ▶

were in daily pain. Within this group, only 26 percent were receiving strong narcotics such as morphine, while 32 percent were receiving weak opioids and 16 percent

were receiving over-the-counter pain relievers. More than a quarter of the patients in daily pain were not getting any analgesic at all.

An editorial accompanying the study, which was published in the June 17 issue of *The Journal of the American Medical Association*, cited poor physician training and patients' reluctance to report pain as factors contributing to inadequate treatment. It also noted that "the optimal management of pain and adverse effects of analgesics requires aggressive use of controlled substances, potentially raising fears of regulatory scrutiny or the disapproval of professional colleagues."

The researchers concluded their report with a familiar refrain: "Failure to prevent and/or treat pain effectively at virtually all times is no longer acceptable." ◆



The Myths That Divide Us

How Lies Have Poisoned American Race Relations

JOHN PERAZZO

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From John Perazzo's The Myths That Divide Us, you will acquire a vast store of knowledge enabling you to debunk the myth of a racist America. You will discover how black-white relations are being sabotaged by a crusade of demagogues marching under the banner of civil rights. You will learn how these activists mischaracterize the U.S. as a nation that condones abuses of its black citizenry, and above all, you will see their misrepresentations refuted by hard facts.

"Perazzo exposes the hypocrisies of 'civil rights leaders' in the most devastating of ways—by using their own words and deeds. His case is backed by a seemingly endless string of anecdotes, facts, and statistics. A valuable resource for anyone involved in the race debate."
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—Jared Taylor, author of *Paved With Good Intentions*

"John Perazzo has compiled one of the definitive books in the field of race relations. Stunningly honest, it should be required reading for anyone befuddled by a half-century of race-oriented public policy."
—Emanuel McLittle, President of Destiny Communications

"*The Myths That Divide Us* attempts to restore common sense and decency to issues lost in a sea of wishful, self-serving thinkers."
—Phil Mushnick, *New York Post*

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—Rev. Jesse Lee Peterson, President of B.O.N.D.

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Covering the Spreads

By Michael W. Lynch

Back from my honeymoon in the fall of 1997, I noted two things. I had produced very few articles for the magazine. Yet the UPS man continued to knock on my door every two weeks with my paycheck; my expense reports kept eliciting reimbursements; my office rent seemed to be paid; and my key to the building's health club continued to unlock the door. I wanted to maintain this arrangement. But less than a year on the job, I was unconvinced it was sustainable.

I could easily explain my lack of productivity. Who, after all, could be expected to knock out insightful feature stories with a schedule packed with retreats in Williamsburg, first-class junkets to Switzerland, Saturdays at the races, master's degree finals in San Francisco, a wedding in Connecticut, and a honeymoon in Italy? And that's just the stuff that distracted me from my inside-the-Beltway beat. Even when I was in town, I found that mornings in meetings, lunches with friends—I mean, sources (journalists don't have friends, only sources)—afternoons in the gym, and evenings at receptions or other events tended to cut into my time for thoughtful reflection, intrepid investigating, and lucid writing. One of the first lessons I learned from my father—who would ask why I did something stupid and then scold me for giving excuses when I explained why—is that one person's explanation is another person's excuse. This explanation worked for me, but I thought it might sound like an excuse to Virginia.

HENRY PAYNE

Washington is a town of inputs, not outputs, so I set out to focus on the former. I work awfully hard, so long as I include everything I do in a day and night as work. My challenge was to convince others of this, which I set out to do by sending my REASON colleagues e-mail memos reporting on my Washington meanderings, the people I met, and the impact the ideas expressed in our magazine were having on this town's power elite.

Over the last nine months, I have reported to my colleagues on such things as a book party for Esther Dyson at *Washington Post* publisher Kay Graham's house, which I attended with my lovely wife, Diana:

Esther's party was a well-attended gathering of the media elite. I would have to watch TV 24–7 just to identify all the writing heads at the reception. While Diana and I were well situated next to the door through which the waiters toted the appetizers and beverages—we stuck to sparkling water and found the paper chicken to be our favorite morsels—we had a hard time deciding how to approach some of Washington's most unapproachable. For example, Diana asked me if it would be appropriate for her to go ask David Gergen what his outside income was on speeches, since he was the only U.S. News*er who didn't have that information revealed in a recent self-congratulatory editorial which stated that he would be happy to disclose it to anyone who asked. I told her it might be touchy, but if she was going to do it, she should also inquire about his eyelid-dropping book interviews on the* Lehrer News Hour.

While Diana pondered the pros and cons of such an approach, I spotted Margaret Carlson of Time, *to whom I have been dying to put a question. No, Chuck [Freund], not who does her hair and why doesn't she cash one of those TV checks and buy a decent pair of glasses. I wanted to ask her if, as she proclaimed on the* Capital Gang, *it wasn't speech if a working stiff spends $5 on a candidate while an executive spends $5,000 on party building, would she mind shutting up since her magazine enjoys a far higher circulation than those of us who write in the noncommercial sphere? But on the way, I bumped into ex-Speaker Tom Foley, back from his stint in Japan (I believe he was ambassador and perhaps still is). I had to pause to tell him how he restored my faith in representative democracy: By getting his arrogant ass voted out of office for suing his own constituents, he helped restore a balance to the system. But alas, before I could even mutter the words, I caught the eye of Jim Glassman, the only media celebrity I actually know, and we discussed, well, I can't remember.*

Oh yeah, I said hi to Esther and Katharine Graham. Esther gave a very short speech—much shorter than Graham's introduction of her—which was all that was needed, considering the profile of her in the day's Washington Post.

Not thinking the memos would ever be published, I reflected bluntly on my surroundings and the goings-on. I always aimed to report on interesting policy discussions as well as to cover such important things as the quality of the food in general, and my intake in particular, although I usually low-balled the alcohol figure. (I was probably boozing it up at Graham's house.)

My memos worked too well. Not only are the checks still arriving and the gym still open, but Virginia started saving my notes so that she could edit them for grammar, spelling, and cussing and publish them monthly under the heading "Capital Letters." This month I offer reflections on a lecture by Charles Kesler (whom, I must admit in the interest of full disclosure, I not only studied under for a few weeks as a Claremont Institute Publius Fellow but also have dined with on many

occasions and find entertaining and insightful); an antitrust debate with Robert Bork; and the national Libertarian Party convention. I only hope that after a few months of this feature, my friends—I mean, sources—don't abandon me.

Subj: Sickness on the right
Date: Fri, Jun 12, 1998 9:14 PM EDT
From: mlynch@reasondc.org

This is a somewhat belated report on Dr. Charles Kesler's Bradley Lecture (Monday, June 8, 1998) on what's wrong with conservatism. These are my impressions patched together from my notes taken that evening. I have asked Charles, with whom I am sure to dine within a couple of weeks, for a copy of his remarks.

Now, Charles is charming, having had plenty of practice at giving such speeches. He started by saying that there's nothing wrong with conservatism that a little Viagra wouldn't fix. But, alas, Charles is a conservative, which means "natural law" is his Viagra. (He also rattled off a few quips about Dole being in the testing pool.)

Dr. Kesler did two things in his speech. He talked about the history of the conservative movement, the fact that before *National Review* and Buckley there were conservatives, but no movement. He also talked about Frank Meyer's fusionism, with anti-communism being the bonding agent. But he backed off, saying Meyer didn't have it quite right. It wasn't really a fusing, but a gluing of the factions. So with no more Cold War, we need some glue. Conservatives are good at being against things—communism, HillaryCare, etc.—but not very good at being for things. We know what we're against, the good doctor intoned, but we don't know what we're for. Conservatism needs to be reborn with a new mission.

The mission: Return to the natural law teachings of America's Founding; return to the moral basis of government. According to Dr. Kesler, we need both a limited government, one bound by a constitution, but also a more active government, one that pursues its moral constitutional basis. To paraphrase, conservatives must reconnect themselves to the constitutionalists of the late 19th century and early 20th century, with an eye to Madison and Lincoln.

Now this obviously didn't fill an hour, so there was more to the lecture. He talked of liberalism's three periods: 1) political liberalism, 2) economic liberalism, 3) cultural liberalism. We live, in case you haven't guessed, in the last period, in which markets are embraced by all, but so is unfettered choice. Now Kesler wasn't libertarian bashing per se. And his argument employs more nuance than I can relate, mostly because I can't recall it all clearly. But it went something like this: Liberalism unchained the individual—free to be you and me—but that wasn't good enough. So individual liberation quickly degenerated into group identity politics,

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which we are all very familiar with. I am not quite sure where he went with this. But the next two things in my notes are an underlined "Return to Natural Right" and a circled "take on Homosexuality as a lifestyle right."

Now we can see that Dr. Kesler's glue is really a solvent. His version of natural right (law, whatever) means we must mount a crusade against homosexuals, while mine means that where people consent to put their parts is no business of the state or politics. As I understand it (my disclaimer: I have never studied philosophy—don't it show), natural law (right) is a slippery concept, meaning different things to different people, especially if those people are David Boaz of the Cato Institute and Larry Arnn or Harry Jaffa of the Claremont Institute.

It was clear that Kesler gave an off-the-shelf speech, a patchwork of previous scholarly lectures. It was very asymmetrical: The college lecture portion on the history of conservatism and liberalism was long, while its engagement with conservatism's current problems was short. In the question period, he evaded policy and operational issues—like, What does this mean here in Washington?—with disclaimers, jokes, and quips. He didn't even mention Chris Caldwell's article in the June *Atlantic Monthly*, "The Southern Captivity of the GOP," which, it seems to me, frames the issue well. Nor did this article come up in questions, which is interesting.

In terms of refreshments, I ignored the cheese and crackers but had a half glass of white wine and a glass of beer. I then returned home for the evening.

Subj: Bork v. Bork
Date: Fri, Jun 19, 1998 3:58 PM EDT
From: mlynch@reasondc.org

On June 18, 1998, the American Enterprise Institute hosted a debate on *U.S. v. Microsoft* in which all participants agreed on one thing: The definitive work on antitrust as applied to this case was written by the man whose last name is now a verb: Robert Bork. That was all they agreed upon, with one side citing Bork's *The Antitrust Paradox* to prove that the government ought to take on Microsoft and the other pulling passages to prove exactly the opposite. What made it most interesting, however, was that Robert Bork was one of the debaters.

After being accused of betraying his own work by George Priest, who teaches law and economics at Yale Law School, the very place where Bork developed his thoughts on antitrust, Bork replied: "George, I wish you would read pages 344, 345, and 346 of *The Antitrust Paradox*, where you will see that I have not changed my mind in the last 20 years." Knowing how this must have sounded, Bork quickly followed up: "That's a hell of a confession to make—that I have not changed my mind in 20 years—but it's true."

Priest responded: "I prefer, Bob, as you know, pages 308 to 309, where you say, 'never in history has it happened or is it possible for a firm to use exclusive dealings or other requirements to gain market power'; pages 192 to 193, where you say, 'any size a company achieves by internal growth is the most efficient size'; and es-

pecially the seminal sentence on page 157: 'The real danger for the law is less that predation will be missed, but that normal competitive behavior will be wrongly classified as predatory and suppressed.'"

REASON Contributing Editor Thomas Hazlett, both the largest and loudest participant, pointed Bork to yet another of his sentences. After ranting, "I want to know where the price increases are. I want to know where the quality declines are. I want to know where the lack of innovation is," Hazlett read a passage from page 137 of Bork's *Antitrust Paradox*: "The problem is to show what exclusion is improper. All business activity excludes. A sale excludes rivals from that piece of business. Any firm that operates excludes rivals from some share of the market. Superior efficiency forecloses...indeed, exclusion or foreclosure is the mechanism by which competition confers its benefits upon society."

But Bork—who, forced to sit for two hours without lighting a smoke, must have felt like Chuck does over Nebraska on a coast-to-coast flight—still managed the best quip. Said Bork: "Since I have written the scripture, I am forced to say that the devil can quote scripture."

Having a softball game to get to, your humble correspondent was unable to stay for libation and post-debate discussion. I slipped out the side door, hopped onto the elevator, and headed back to REASON's Washington headquarters, where I changed into my softball clothes, grabbed my glove, and darted off to the Vietnam Memorial.

Subj: LP convention
Date: Mon, Jul 6, 1998 3:06 PM EDT
From: mlynch@reasondc.org

Your humble correspondent and his summer sidekick headed off to the Libertarian Party convention Thursday. Being on the weekly "phone, pick the brain, and bug" list for the producers of Fox's new *Drudge Show*, I was under the impression that I stood a better than even chance of reporting on the convention for Drudge's Independence Day audience—which is to say, his family, since the air time conflicted with fireworks. Eager to get my writing head, as *National Review*'s Florence King has dubbed it, on TV, I was making an extra effort to absorb the morning's scene.

One of my first observations was how hot the Washington morning was and how far the Convention Center is from the particular exit of the Metro Center from which we emerged. Now, the convention center is large and the L.P. small, so simply making it to the edifice did not end our travels or stop our sweat. When we entered the building it wasn't clear that there was any convention going on at all, since there were no signs to guide our way. A tie-dyed–T-shirt–wearing fellow in a wheelchair, who entered the convention center with us, blamed it on the local power structure. "I bet Democrats run this place," he muttered as we walked our, and he rolled his, way to the check-in stand. Safe bet.

Once checked in, we headed upstairs to Convention Hall C, a large room with a replica of the Capitol backgrounding an impressive stage. Not being an official state delegate, I made my way to the general seating in the back of the convention hall, where I proceeded to read a press release about the "Belly of the Beast" (my new adopted town and Chuck's hometown), while Michael Cloud, a libertarian motivational speaker, went on at length about how the Libertarians need to be "unreasonable," a point that I never thought needed emphasizing.

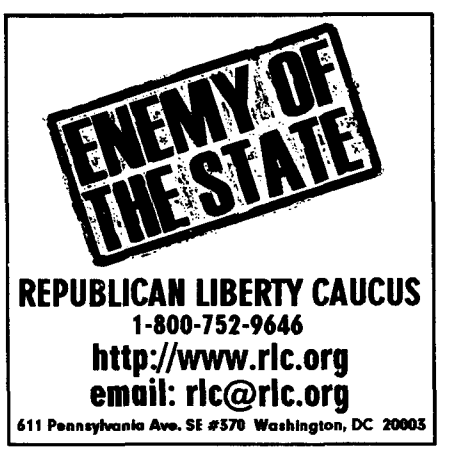
But I must say, sitting in the back of the convention, I thought to myself, "This is a very mainstream crowd, for a bunch of libertarians." Although the hall was still sparsely populated, those who were there looked fairly normal. Then, out of the corner of my eye, I saw a long-haired bearded man with backpack. "That's more like it," I thought to myself as I turned my gaze back to the stage where Michael Cloud was exhorting the crowd to unreasonableness with the skill of a TV preacher. Then I heard a familiar voice and felt a presence beside me. I'll be damned if the long-haired man wasn't former REASON scribe Brian Doherty, who was on assignment for *Liberty*, which is where you will have to look for a fuller account of the convention, as I departed Convention Hall C shortly into the NRA's afternoon presentation and never returned. It seemed like the reasonable thing to do.

P.S. Charles Murray gave a well-received luncheon address in which he maintained the thesis that the American government is on the cusp of a crisis of legitimacy. According to Murray, Americans have, by and large, become alienated from the federal government since the 1960s, the very point at which the feds began taking sides in moral disputes. Many Americans who aren't averse to government have contempt for it, and the dynamics of popular democracy in the information age are destabilizing at any rate. Murray said more and more Americans are yelling "That's none of the government's business" at their TV sets. I know I am.

Murray ended his talk with a list of do's for libertarians: Do make common cause with others, Murray counseled. Do emphasize libertarians' gregarious nature, family, and community, Murray continued. Speak openly about virtue. Seeing eye-to-eye with Claremont's Kesler, Murray urged the assembled L.P. members to emphasize the ideals of America's founding. He ended his speech to a standing ovation.

Other important news: The food served at the Murray lunch—steamed chicken, zucchini and squash, and some sort of cabbage concoction (I think)—was so bad I considered giving up eating for the entire weekend. When I returned to my office a phone call from Drudge's producer awaited me. The L.P. had been bumped from the agenda to make room for the *Time*/CNN retraction of their poison gas story and Linda Tripp's testimony. "Unless you saw Lewinsky at the convention," I recall the message stating, "we can't use you." There's always next week.

Hope you all had a happy Fourth of July.



Green Redlining

HOW RULES AGAINST "ENVIRONMENTAL RACISM" HURT POOR MINORITIES MOST OF ALL

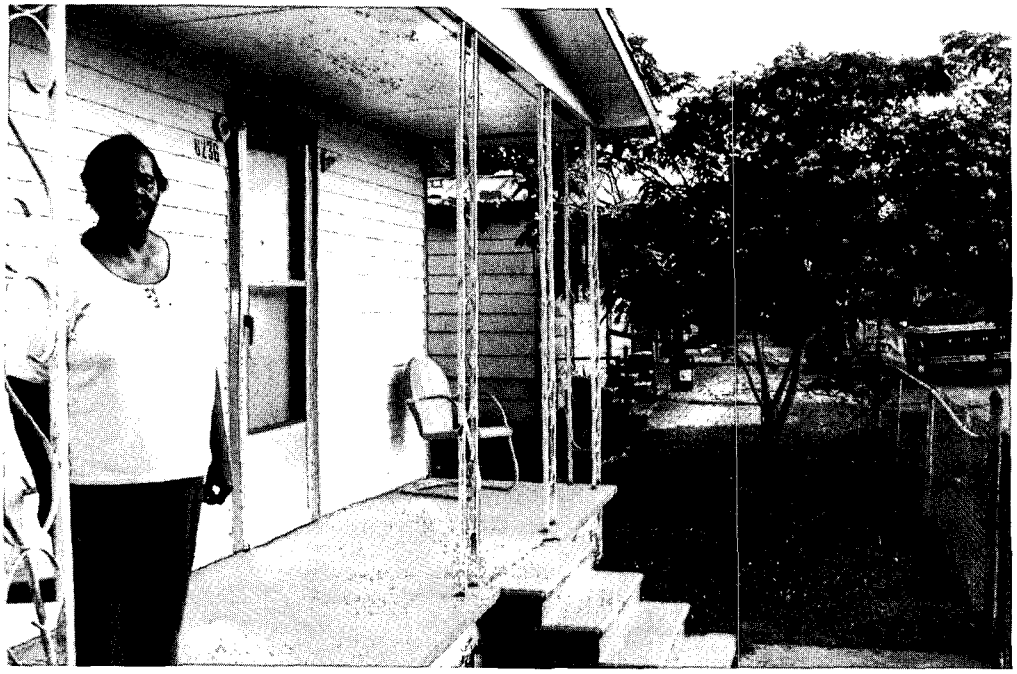
Janice Dickerson never imagined she could be accused of environmental racism. A black community activist who now heads the Louisiana Department of Environmental Quality's Office of Environmental Justice, Dickerson thought she was doing right by both the environment and the impoverished, mostly black community of Romeville when, in 1997, she helped shepherd through a deal to build Shintech Corporation's state-of-the-art, $700 million polyvinyl chloride plant in St. James Parish. But today, she can't even talk to the people of Romeville.

Dickerson committed her sins while acting as liaison between her agency, Shintech officials, and Romeville residents—a role for which she seemed uniquely suited. As an activist, she had long been critical of the state's industries for ignoring the communities in which they operate. She says she was hired by the LDEQ "because business [in Louisiana] needs to change the way they do business. Environmental justice is about involving the community."

Her mission is part of a larger Louisiana "enterprise zone" initiative to attract industry to poor areas by trading tax incentives for guarantees that companies will hire 35 percent of their labor force locally. Until

ELLEN PROCHNIK

BY HENRY PAYNE



GREEN WITH ANGER: "What this community wants is being ignored," says Gladys Maddie, a Romeville resident for 30 years. Along with her mostly black neighbors, she helped form the St. James Citizens Coalition to work with Shintech management.

recently, those efforts appeared successful for both Shintech and Romeville. The company not only passed state and federal emissions tests with ease but also agreed to a $500,000 training program to help local residents land some of the plant's 255 high-paying jobs. Shintech even pledged to hire 50 percent of the 700 needed construction workers locally. Furthermore, the plant would plow $5.8 million into local schools under a parish construction tax. Beams Dickerson, "Shintech made a commitment to hire locals. This is a facility that wants blacks and wants to hire them."

But the Clinton administration and its radical allies in the environmental and civil rights movements have a different vision of environmental justice. Under an Environmental Protection Agency policy drafted this year, a state agency that approves an emissions-producing facility having a "disparate impact" on minorities—that is, a facility whose emissions affect predominantly nonwhite communities—is in violation of Title VI of the Civil Rights Act. Greenpeace and the Tulane University Environmental Law Clinic have filed a federal claim and a state lawsuit under this policy, accusing Dickerson and her colleagues at the LDEQ of discrimination. Janice Dickerson, on the advice of LDEQ lawyers, can no longer speak with Romeville's residents. And the EPA has blocked Shintech from building its plant in poor and black Romeville because Romeville is...poor and black.

The EPA's policy and its application in Louisiana have enraged and confused governors, mayors, and environmental officials across the nation. These officials see the administration's efforts not as environmental justice but as a policy of environmental redlining that effectively excludes minority areas from badly needed business investment.

Though the EPA's rule does not specify what constitutes a "disparate impact," in practice the agency has determined such impact by drawing one-, three-, and five-mile radii around an industrial site. If the minority population within any of these lines is roughly twice as great as that of the surrounding county or state, then the facility is vulnerable to a civil rights claim. In Shintech's case, 82 percent of the population within five miles of the facility is black—significantly larger than the 49 percent in St. James Parish and over twice the black population (31 percent) of the entire state.

Such a standard threatens not only facilities in rural, "greenfield" areas like St. James but also urban sites in major American cities where mayors are desperately trying to attract jobs, especially to abandoned industrial "brownfield" sites. "There is not a brownfield in New Orleans that is not in a minority community," sighs Fred Barrow, an African American who leads the LDEQ's efforts to develop brownfields and fears that the EPA's rule could redline the entire city. Detroit Mayor Dennis Archer, an African American and a Democrat, says the EPA's environmental justice policy is "so vague and so broad that it nullifies everything that we have done to attract companies to our brownfield sites." This June, Archer drafted a resolution for the U.S. Conference of Mayors demanding that the administration suspend its Title VI rule. The resolution was adopted unanimously.

Russ Harding, commissioner of Michigan's Department of Environmental Quality and an outspoken critic of the administration's policy, says the EPA's rule gives fringe activist groups a potential veto over any future or existing industrial facility that needs federal permitting. "All it takes is a postcard," says Harding, who predicts that rather than locate near minorities and face the threat of civil rights litigation, companies "will quietly decide to locate somewhere else, even overseas."

"Environmental justice" was originally conceived in the 1980s as a way to consider the economic and health needs of poor communities in the siting of industrial facilities near them. But as the idea matured into a national movement, its focus narrowed to race. Black activists such as Ben Chavis and Professor Robert Bullard of Clark Atlanta University contended that industries and the state agencies that oversee them were deliberately

PHOTOS: HENRY PAYNE

targeting minority communities for polluting facilities because residents lacked the political clout to stop them. To address this alleged injustice, activists pressed for the establishment of a "disparate impact" standard.

Unlike "discriminatory intent," which requires litigants to prove a facility was deliberately located in an area because of its racial composition, "disparate impact" requires only evidence that the facility has the "effect" of discriminating. For the past six years, the Clinton administration has not only embraced the national environmental justice movement but has aggressively pushed a disparate impact standard as well. "Nobody can question that, for far too long, communities across this country—low-income, minority communities—have been asked to bear a disproportionate share of our modern industrial life," said EPA Administrator Carol Browner at a 1994 White House briefing. Celebrating Earth Day on April 22, Vice President Al Gore directed all agencies to redouble their efforts to enforce the EPA's policy, saying "our efforts to date have not been sufficient."

The EPA's Title VI rule, issued this spring without consulting state or local governments, applies a disparate impact standard to all permits issued by state and local agencies that receive federal funding. Predictably, the policy has opened the floodgates to suits brought by the very activists that lobbied for it. The effect, writes Stephen Huebner, a Washington University economist, has been to "deny communities like Romeville the right to decide what is in their own best interests, while opening the door to outsiders to play a larger role in local matters."

In the Shintech case, the EPA's environmental redlining rule gave Greenpeace—which has never concerned itself with civil rights issues—another weapon in its international campaign to ban polyvinyl chloride (PVC), a plastic widely used in everything from vinyl siding and door frames to computer keyboards and blood bags. Greenpeace opposes PVC because it claims plants that use chlorine create dioxin as a byproduct—never mind that an environmental impact study prepared for the LDEQ found that "dioxins were never detected...from these manufacturing facilities." The group also claims dioxin and chlorine are serious toxic threats, a concern endorsed by the EPA and Gore but dismissed by most scientific experts for lack of evidence.

It was Greenpeace, with legal help from the Tulane Environmental Law Clinic, that first claimed, in April 1997, that Shintech's siting was discriminatory under a 1994 Clinton executive order (a precursor to the 1998 Title VI rule) instructing all federal agencies to be on the lookout for environmental racism. In July of last year, Greenpeace filed a claim with the EPA, saying Shintech's siting violated federal civil rights law. "Greenpeace made the decision that we are going to stop dioxin pollution by trying to stop the expansion of the PVC industry," Greenpeace activist Damu Smith told *National Journal* last summer. Conceding that the group's goal is not environmental justice but PVC extinction, Smith added: "Shintech just can't be built."

Shintech's local supporters say the federal government has sold them out. "The EPA is empowering special interests to make decisions that are against community interests," protests Dickerson. "What this community wants is being ignored," adds Gladys Maddie, a Romeville resident for 30 years who, along with her mostly black neighbors, helped form the St. James Citizens Coalition to work with Shintech management.

David Wise, plant manager for the new Shintech site, says the company selected the rural, 3,700-acre site now occupied by sugar cane fields not because it was in a black area but because of its proximity to raw materials (a salt dome in particular), its deep water access, and the area's industrial infrastructure. Wise has spent countless hours in the poor neighborhoods near the plant listening to residents' concerns. Shintech has flown some residents to 97-percent-white Freeport, Texas, where the company operates another PVC plant. That facility gets 90 percent of its labor force locally and invests in numerous community social programs.

In an interview with *National Journal*, the EPA's Browner insisted that "if people who live in the community feel like they are part of the decision-making process that affects their community, a lot of issues that may otherwise be raised [by civil rights claims] can be spoken to in advance." But Wise finds such platitudes disingenuous. "We have partnered with [the Romeville] community. Our permits are sound," he says. "What else do we have to do to get a plant approved?"

Chris Foreman, a political scientist at the Brookings Institution and author of a forthcoming book on environmental justice, laments the administration's racial politicization of the permitting process. "Environmental justice is not fundamentally racial," Foreman says. "But Title VI invites race-based claims." He says accusations of environmental racism are "dubious, but politically compelling. No one wants to be called a racist." In its zeal to apply Title VI civil rights law to industrial emissions, Foreman contends, the administration has obscured the real health problem that threatens communities like Romeville: poverty.

Shintech's jobs, starting at $12 an hour plus benefits, pay far

Russ Harding, commissioner of Michigan's Department of Environmental Quality and an outspoken critic of the administration's policy, says the EPA's rule gives fringe activist groups a potential veto over any future or existing industrial facility that needs federal permitting. "All it takes is a postcard."

and above the $6-an-hour jobs (with no benefits) that many St. James Parish residents now work in the sugar cane fields. Cherie Fernandez, a pro-Shintech African American who works for $24 an hour in another chemical facility across the Mississippi from Romeville, says more manufacturing jobs like Shintech's are needed, especially as St. James's population of welfare dependents go looking for work under new federal welfare laws (18 percent of the county's blacks are unemployed). Barrow, the LDEQ's brownfields expert, says the EPA doesn't understand that the "environment is the totality of [minority] surroundings. Industries like Shintech mean the streets are paved. They mean community centers for the kids. It's laughable to say these communities are better off without them."

State and local governments across the nation have felt Louisiana's pain. Despite the national economic boom, black unemployment remains over 9 percent, and local governments are scrambling to attract industries to state enterprise zones and brownfields. In addition to the U.S. Conference of Mayors, local organizations and business groups throughout the country have lined up to condemn the EPA's environmental redlining policy. The list includes 17 states, the Environmental Council of the States (a group representing each state's top environmental official), the National Association of Counties, the National Association of Black County Officials, 14 attorneys general, the Western Governors' Association (including Colorado Gov. Roy Romer, head of the Democratic National Committee), the U.S. Chamber of Commerce, and the National Black Chamber of Commerce.

Addressing the Black Chamber of Commerce's annual meeting, U.S. Chamber of Commerce President Thomas Donahue said: "I'm trying to think of a policy that would be more effective in driving away entrepreneurs and jobs from economically disadvantaged areas—and I can't do it."

Such fears were sown in cities like Lansing, Michigan, where General Motors will soon consolidate two huge facilities employing 7,000 people into a single final-assembly plant. City officials are lobbying the company to build the new facility in one of the majority-black city's many brownfield sites. But as long as the EPA rule is in effect, says Michigan environmental chief Harding, "G.M. will not build in Lansing. They'll buy farmland somewhere instead. The loser won't be the company; the losers will be the workers and cities." Says Steve Serkaian, media relations director for Lansing Mayor David Hollister: "What does this have to do with civil rights? If these plants don't build in these communities, [residents] will suffer from malnutrition, not pollution."

Michigan officials have been in the forefront of the Clinton administration's critics, not only because of their concern for environmental redlining's effect on proposed facilities but because of the effect on existing facilities. The EPA's Sector Facility Indexing Project (available at http://es.epa.gov/oeca/sfi/) lists plants around which the agency has literally drawn targets. The demographics within a three-mile radius of every plant in five major industries (automobile assembly, pulp manufacturing, petroleum refining, iron and steel production, and the primary smelting and refining of aluminum, copper, lead, and zinc) are just a keystroke away.

Contrary to the EPA's claim, a Scripps Howard News Service study of facilities listed on the agency's Web site in 13 industrial states did not find a disproportionate number in minority areas. Louisiana, for example, is 31 percent black, but only 18 percent of its industrial plants are located in black areas. The study did, however, find dozens of facilities in minority areas that could be vulnerable to activist suits under EPA's Title VI rule if and when they seek to expand or renew their permits. Eleven of the most vulnerable of these plants are in the auto industry—six of them in Michigan.

Fifty-seven percent of the population living within five miles of Ford's truck assembly plant in Dearborn, for example, is minority, as compared to 16 percent of the state's population. As a result, when Ford sought to update its paint operations this year, local activists threatened it with an environmental racism complaint, delaying the company's permit for four months. In the highly competitive auto marketplace, which measures new model development in months, Ford is concerned that the EPA's policy could create a nightmare of red-tape delays. "It seems like the EPA is setting up an almost endless adversarial process," Ford executive Tim O'Brien told *The Detroit News*.

Though the EPA ignored local officials when it drafted the Title VI policy, the administration cannot ignore their concerns now. Big city Democratic mayors are a key power base in the Democratic Party, and EPA chief Browner has reassured them in meetings around the country that she will work with them to draft a policy that meets their concerns. But Browner insists that a Title VI disparate impact standard must play a role in the permitting process, an approach that many state environmental officials simply find unworkable.

In a letter to Browner demanding that her agency withdraw

What is perhaps most disturbing about the administration's crusade is that it has ignored evidence—much of it from the EPA itself—that minorities are not disproportionately affected by industrial waste. As with secondhand smoke and global warming, the administration's policy is driven not by facts but by ideology.

its environmental redlining rule, California EPA's lawyers suggest that the U.S. EPA "cannot lawfully issue a policy" extending Title VI civil rights law to pollution without congressional action. Under current law, continues the California letter, neither state nor federal agencies have the authority to "to deny permits based on the racial makeup of the area surrounding the facility." Furthermore, the "California Supreme Court has determined that hazardous waste laws do not preempt local land use authority."

California EPA concludes that, without congressional action, the administration's unilateral re-interpretation of Title VI law would give the EPA "unfettered discretion to apply statistical data in any way it chooses, create risk assessments without peer reviewed standards, determine that all discharges create measurable disparate impacts by their very existence and treat people differently based on racial or ethnic grounds." Environmental officials in others states support California's legal analysis.

VERY DISPARATE IMPACT: St. James Parish, site of the proposed Shintech operation, is already home to 13 industrial plants. Despite claims by the EPA and environmental activists, no good evidence exists that race and pollution are related.

No matter what form the administration's environmental justice policy finally takes, the underlying question is whether environmental racism exists at all. What is perhaps most disturbing about the administration's crusade is that it has for years ignored evidence—much of it from the EPA itself—that minorities are not disproportionately affected by industrial waste. As with the issues of secondhand smoke and global warming, the administration's policy is driven not by facts but by ideology.

The administration and its allies cite a handful of studies conducted by activist groups indicating systematic discrimination in the siting of industrial facilities. Most influential of these was a 1987 study by the United Church of Christ Commission for Racial Justice, which found hazardous waste facilities were more likely to be located in zip codes populated by minorities, and a 1992 *National Law Journal* study that claimed to show tougher enforcement of environmental laws in white areas than in black areas. However, subsequent independent academic studies by researchers at New York University, Washington University, the University of Chicago, and elsewhere have all contradicted the notion that race and pollution are related.

In a comprehensive survey of studies examining the surrounding demographics of plant sites, Washington University's Huebner concluded this year that "the evidence relied on by environmental justice advocates is flawed....In particular, the dynamics of the housing market prove a plausible alternative explanation for the disparities observed in the current location of industrial facilities. Recent evidence indicates that minority and poor populations tend to locate near industrial facilities after the facilities are located, possibly due to lower property values."

Most damning, however, have been studies by the EPA itself. Two such studies were obtained by David Mastio of *The Detroit News*. The EPA studies were conducted to confirm the link between pollution and race found in the United Church of Christ report and other studies. In both cases, however, the EPA's exhaustive survey of the communities surrounding 1,234 Superfund sites—some of the most polluted land in the country—turned up no evidence of disparate impact on minorities. To the contrary, the studies found that the populations most exposed to these toxic sites were white and middle class. For example, in EPA Region 5, which includes the heavily industrialized Rust Belt, all minorities were underrepresented in areas around Superfund sites. But because the EPA's studies contradicted emerging administration policy on environmental racism, they were never made public.

Upon *The Detroit News*'s exposure of these hidden reports, the House Commerce Committee, outraged that key documents on a major EPA initiative had been withheld from congressional oversight, immediately launched an investigation and demanded all relevant EPA documents. But two months later, the *News*'s Mastio found that the agency continued to withhold a key report contradicting the *National Law Journal* study. The report, written five years ago by Bernard Sisken, a government expert

on civil rights cases, found the *Journal*'s findings were either "statistically insignificant" or erroneous.

Lacking evidence for their cause, environmental justice activists have used scare tactics to turn residents against proposed plants. In Claiborne Parish, Louisiana, Greenpeace and Earth Justice used a campaign of fear (and exploited Clinton's 1994 executive order) to torpedo a proposed $855 million uranium enrichment plant last April.

The Claiborne Enrichment Center (see "Environmental Injustice," August/September 1997) had been recruited by a rural parish where there are few industrial jobs and where 30 percent of residents live below the poverty line. Internal company documents show the plant's investors—a consortium of American utilities and a European construction company—were attracted to the area by local leaders' enthusiastic response as well as its proximity to an interstate highway, its low property prices, and its minimal seismic activity (an operational necessity for the facility's high-speed centrifuges). But while polls showed broad, multiracial support for the company's location of 180 high-paying jobs in a sparsely populated enterprise zone, anti-nuclear activists fanned out among the roughly 250 poor, black residents of the area bordering the 440-acre site (the plant itself would have occupied 80 acres), warning of poisonous gases that would strangle them in their sleep and of radioactive materials that would contaminate their groundwater.

Marjorie Walker, an African American who lives in a clapboard home within a mile of the Claiborne site, was visited by Greenpeace representatives who told her that company officials and the state of Louisiana would deliberately contaminate her community because it was black. "Greenpeace told me how many plants had been located in poor communities," she says. "All those plants down in 'Cancer Alley' are located where the black people live."

But "Cancer Alley," a term coined by environmentalists to describe the alleged sickness inflicted by chemical and refining plants along the Mississippi between Baton Rouge and New Orleans, is a myth. In a study released this year by the nationally respected Louisiana Tumor Registry, which has tracked cancer incidence in Louisiana for 20 years, cancer rates for the so-called "river parishes" were found to be at or below national averages. "Are people who live in the industrial corridor likely to get cancer?" asks Tumor Registry Director Vivien Chen. "The answer is no."

Yet activists continue to talk routinely of people "dropping dead" in Louisiana's Mississippi Valley. Back in St. James Parish, situated in the middle of the industrial corridor, Brenda Huguet believes that she's been made ill by local industry. A kindly white woman who is part of a local anti-Shintech group, Huguet says she's been convinced by the group's legal representatives at the Tulane Environmental Law Clinic and her environmentalist allies that she is suffering from an unidentified lung disease caused by "Cancer Alley" industries. If Shintech were allowed to locate in the sugar cane fields near her home, she says, she would die.

GREENPEACE BE WITH YOU: Like most residents of Homer, Louisiana, beauty shop owner Emma Hilliard strongly supported the proposed Claiborne enrichment site five miles out of town. Greenpeace claims of environmental racism, however, brought regulatory delays that eventually doomed the plant. "There is no place in the county where they could have put the plant and not been around blacks," Hilliard says.

Huguet emphasizes that she and other plant opponents aren't against jobs; they're just against the location of another chemical plant in the parish. She wants to know why St. James can't recruit "clean" industries like auto plants. Leaving aside the likelihood that environmental groups could also claim environmental racism if a large automotive facility were to locate in St. James, the idea that a PVC plant is somehow less healthy than other factories illustrates radical environmentalists' exploitation of the regulatory process to oppose industrial development.

At the core of Greenpeace's opposition to Shintech is the plant's alleged production of dioxin. In fact—as detailed in LDEQ and industry reports—the plant would produce none. Zero. In its analysis of Shintech's Romeville and Freeport facilities, Chemrisk, an environmental engineering firm, put it this way: "Greenpeace made several

assertions that the production process produces high concentrations of dioxins in its wastewater effluent. There is no objective scientific data that supports this claim."

Huguet's concerns about Shintech's emissions are influenced by Greenpeace claims, echoed in media reports, that Shintech will dump 190 tons of toxic pollutants into the air every year. While Shintech has permits to put out 190 tons of pollutants each year, it will emit much less; the typical PVC plant of that size emits between 30 percent and 50 percent of that amount. And Hilry Lantz, an environmental engineer for the LDEQ, says over two-thirds of these emissions are from methanol, used as a catalyst in the production process. Methanol is a noncarcinogen hailed as a clean, alternative fuel for automobiles by the very same environmentalists who oppose Shintech! Indeed, a modern, "clean" General Motors plant in Shreveport emits around 1,400 tons of similar, noncarcinogenic pollutants a year.

On nearly every aspect of the environmental racism debate, the administration and its allies make false claims to residents and reporters. Luke Cole, for example, is general counsel for the Center on Race, Poverty, and the Environment in San Francisco, an adviser to the EPA on environmental enforcement, and perhaps the single most influential activist in prodding the EPA to draft its Title VI rule. Like many of the groups that have filed claims under the EPA's rule, Cole's group also received funds from the agency.

Asked what Shintech must do to satisfy environmental justice concerns, Cole says the answer is simple: The company need only ask other industrial plants located in St. James Parish—13 in all—to collectively reduce their air emissions by the same amount that the Shintech plant would add. This would at least sound reasonable if the St. James Parish area were bumping up against its federally imposed "attainment" ceiling for industrial emissions. But LDEQ engineer Lantz, who approved Shintech's emissions permits, says Cole's point is moot because St. James is well within attainment limits even with the addition of the Shintech plant. Cole's "simple solution" is a red herring.

The foundation of the administration's support of environmental racism claims seems to be a belief that minorities are permanent victims. It is a theme that runs through press coverage of the issue as well. A July *National Journal* cover story, for example, examined the Shintech case in detail by talking to plant managers and opposition groups. But the reporter did not once consult a black member of the St. James Citizens Coalition, or Janice Dickerson, or a black parish councilman for their opinion of the plant. The article's assumption is that blacks near the plant must be victims because they are black.

Shintech's black supporters in Romeville are aware that they are not conforming to stereotype. "Blacks are supposed to play the role as victim," says Nanette Jolivette, lawyer for the St. James Citizens Coalition. "But this community did not play that role. This community is to be commended." The fact that the community has not been commended by national black leaders has rankled plant supporters. Despite never having visited the Shintech site, Jesse Jackson, Rep. John Conyers (D-Mich.), and Sen. Carol Moseley-Braun (D-Ill.) are among those who oppose Shintech on grounds of environmental racism.

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"Jesse Jackson has never visited us," says an angry Oliver Cooper, a black councilman from St. James Parish who, like Dickerson, has been named in the anti-Shintech suit for his "discriminatory" support of Shintech. "He does not represent us. Six of seven councilman [in this parish] support this plant." Jackson, complains Cooper, "has never spoken to any of us."

Romeville residents believe that the real injustice would occur if Shintech chose *not* to locate in St. James Parish. Some of them have seen the company's Freeport, Texas, plant, and know it is in a prosperous, white area, one of the richest counties in the state. Romeville's black residents want the chance to make the same choice the white residents of Freeport made.

In Claiborne Parish, site of the administration's first experiment in environmental redlining, the public's choice never really counted. Federal bureaucrats drew a one-mile radius around the plant's location, determined the racial makeup of the area based on census figures, and declared that the plant would have a disparate impact. As a result, the parish, whose property tax base would have doubled with the presence of the Claiborne Enrichment Center, still cannot afford a fire department; many of its residents still drive 40 miles to work in Shreveport's casinos; and the school system is $12 million poorer without the construction tax the plant would have paid.

Greenpeace, on the other hand, can celebrate one more win in its international crusade against the nuclear industry. And the Clinton administration can claim a victory for "environmental justice."

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The Politics of Permanent Immigration

HOW PRO-IMMIGRATION FORCES TRIUMPHED—AND WHY THEY'RE LIKELY TO KEEP DOING SO.

★★

By John J. Miller

AT A DECEMBER meeting with Republican National Committee Chairman Jim Nicholson, a group of trade association executives ran through their legislative priorities for 1998. Tort reform, regulatory relief, and tax credits for research and development topped their agenda—just as they always do. The RNC chief promised that the GOP would do what it could—just as he always does. The gathering could have occurred at any time during the last several years, and its content would not have been very different. It was another typically dull Washington roundtable discussion about how the federal government can help American business.

Right before the meeting ended, however, Bruce Josten of the U.S. Chamber of Commerce spoke up. "There's one more thing," he said. "If the economy keeps growing the way it has, we're going to run out of people." He predicted a severe labor shortage sometime in the next decade. Suddenly the room jumped to life. Josten's colleagues backed him up. Within five or 10 years, the group thought, there will be many more new jobs than people able to fill them. The country already is nearing full employment: The unemployment rate dropped to 4.3 percent in May, the lowest it's been in 28 years. An ominous demographic problem makes for more trouble: There are 22 million fewer Generation Xers than baby boomers. "Unless we

KERI ROSEBRAUGH

find new ways to increase our productivity, we're going to have to bring in more people simply to maintain the economy's growth rate," said Josten. "I'm talking about more legal immigrants at all skill levels."

It's hard to imagine anyone in Washington speaking these words just two and a half years ago, when it looked like congressional Republicans and President Clinton were close to an election-year deal that would have formally reduced legal immigration for the first time since the 1920s. A consensus had started to emerge among the Washington political establishment to scale back on admissions, primarily for economic reasons but also because of cultural concerns, population worries, and environmentalism. The bipartisan U.S. Commission on Immigration Reform, led by the late liberal heroine Barbara Jordan, supported the cuts and was instrumental in building the political momentum. Democrats such as Sen. Ted Kennedy (Mass.) were looking for a populist cause to use against big business. Conservatives divided deeply and often bitterly on the issue, and it appeared as though much of the movement was ready to jettison Ronald Reagan's legacy of support for newcomers in order to ride a wave started by California's Proposition 187, a successful ballot initiative aimed at discouraging illegal immigration.

Some acted from a deeply held animus toward multiculturalism, which they believed was fueled by immigration, while others simply wanted a winning political issue. Groups long opposed to immigration because it increases population pressures, such as the Federation for American Immigration Reform, pressed their advantage. In addition to a reduction in numbers, restrictionists appeared on the brink of enacting an array of policies that would have reversed

There is now an effective immigrant lobby in Washington that includes not just groups that support immigration (these always have existed) but also immigrants themselves.

America's history of generous admission levels: income requirements for immigrants trying to gain entry; a ban on the employment of foreign students upon their graduation from U.S. colleges; new prevailing wage rules for companies hiring foreign-born workers; and—perhaps most threatening of all from a pro-immigration viewpoint—a provision that would have sunset the current system of admissions by a certain date and thereby put restrictionists in the political driver's seat. Sen. Alan Simpson (R-Wyo.), an anti-immigration leader, declared: "Business advocates continually give me the babble, 'All we want, Simpson, is the best and the brightest.' I say, 'Bull! You want the best, brightest, and cheapest, and I for one am going to bust up your playhouse.'"

But Simpson and his friends failed almost entirely, a defeat from which they haven't yet recovered and probably won't for years. Today, the powers that be in Washington are on the verge of actually boosting the number of immigrants entering the United States by 190,000 over five years—an astonishing reversal. More surprises may be in store as the business community starts, however tentatively, to suggest that sustaining America's long economic boom into the next century will require importing more people. The politics of immigration have undergone a stunning sea change. The strong economy has played a key role in this transformation, but perhaps equally important are a series of political developments making it almost unimaginable that immigration levels will suffer even modest reductions in the foreseeable future without a serious economic downturn. The last great wave of immigration, from about 1880 to 1924, brought roughly 25 million people to the United States. The current wave, which picked up steam in the late 1960s, may last much longer than its predecessor.

In analyzing the reasons for this reversal, it's important to start with the realization that immigrants aren't exactly winning popularity contests today. A poll conducted for PBS last summer by Princeton Survey Research Associates found that big majorities of Americans think immigration overburdens the welfare system, causes taxes to rise, hurts job opportunities for the native-born, and fosters racial and ethnic conflict. Oddly, however, more Americans wanted immigration kept at current levels (39 percent) or increased (10 percent) than wanted immigration reduced (36 percent) or stopped altogether (10 percent).

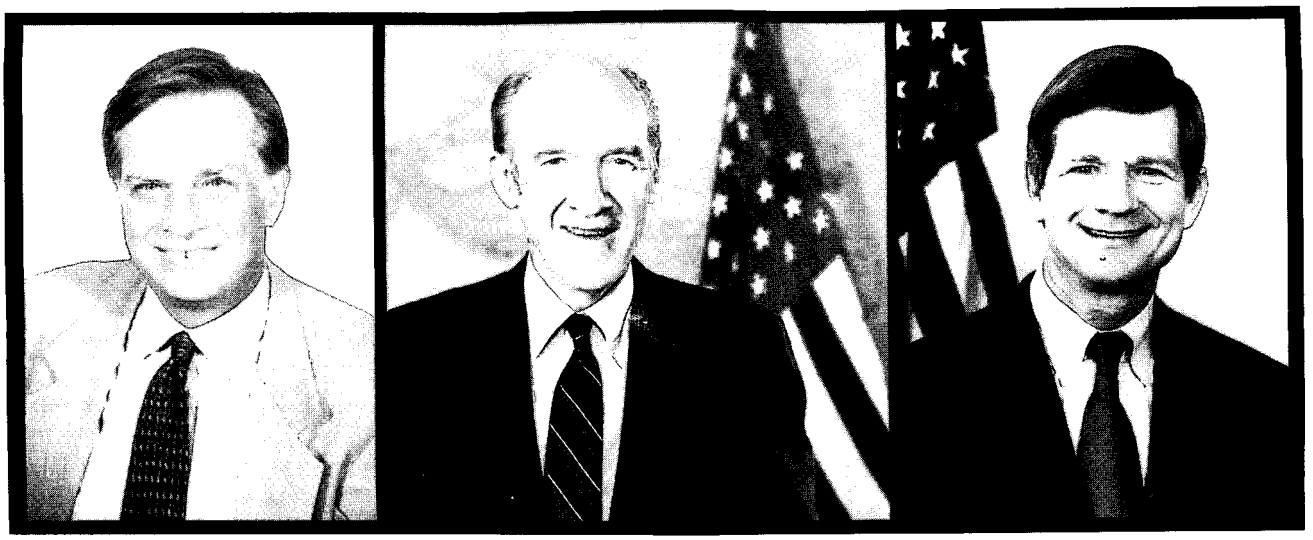
THE SLIGHT EDGE in favor of immigration, which falls within the poll's margin of error, may not seem impressive—until you consider where these numbers used to be. In opinion polls taken for more than 50 years, almost always a plurality and often a majority of Americans have wanted immigration levels reduced. In the early 1990s, surveys routinely showed more than 60 percent of the public favoring cuts. Support for lower immigration has dropped 15 to 20 points in just a few years.

The economy explains much of this change. Immigrants' approval ratings, like the scandal-plagued Clinton administration's, benefit from good times. In fact, public desire to reduce immigration always has tracked U.S. economic performance. The loudest calls for cuts in admission tend to come toward the end of recessions, as they did in 1991–92 and 1981–82. Likewise, immigrants get a boost during healthier periods. Today, more people want immigration levels increased or maintained than at any point since 1965, when Congress rewrote immigration law by scrapping the national-origin quota system adopted in the 1920s, created an admissions process based mainly on family reunification, and made the current influx of newcomers possible.

For all the economy has done, however, a series of political events also have played a critical role in reshaping the immigration debate during the last several years. The most important may be one of the least noticed: There is now an effective immigrant lobby in Washington that includes not just groups that support immigration (these always have existed) but also immigrants themselves. At the center of this movement is Rick Swartz, an ex-leftist who is perhaps the foremost pro-immigration political strategist in the country.

Swartz is a rare Washington lobbyist: An activist at heart, he doesn't always follow the money but instead chases down cash to help him finance his own crusades. Immigration always has topped his list of priorities. "It's a quintessentially American issue that cuts across virtually every constituency," says Swartz. "I don't normally quote the Bible, but the Book of Leviticus says it well: 'If a stranger sojourn with thee in your land, ye shall not vex him. But the stranger that dwelleth with you shall be unto you as one born among you, and thou shalt love him as thyself; for ye were strangers in the land of Egypt.' Those are compelling words."

Swartz, whose red face and bushy eyebrows lend him a subtly villainous look, is probably the figure most disliked by Washington restrictionists. He has almost no public persona; he doesn't debate on *Crossfire* or write op-eds for *The Wall Street Journal*. But his influence is felt everywhere. "He's



Immigrant Friend and Foes (l-r): Anti-immigrant activists have dubbed Rick Swartz the Professor Moriarity of "high immigration lobbying." Stumping for reduced immigration, former Sen. Alan Simpson (R-Wyo.) declared that businesses only wanted "the best, the brightest, and the cheapest" workers. Influential Rep. Lamar Smith (R-Tex.) smiles for the camera but frowns at immigrants.

the Moriarity at the center of the web of high immigration lobbying," says Mark Krikorian of the Center for Immigration Studies, who is no fan. "He pretty much runs everything."

Swartz got his start as a hard-left civil rights lawyer in the late 1970s; he gradually evolved into an unclassifiable supporter of economic growth and opportunity. He spent several years working closely with local coalitions of ethnic groups composed of post-1965 immigrants from Asia, Latin America, and the Caribbean. He quickly recognized the immigrants' almost complete lack of political clout. "They had no voice on Capitol Hill," he explains. "They were going to get slammed every time unless something changed."

Swartz, a consummate coalition builder, founded the National Immigration Forum. In 1982, he strategically merged with the American Immigration and Citizenship Conference, a much older outfit that was made up primarily of white ethnic groups associated with Ellis Island. This assured that the National Immigration Forum couldn't easily be tagged with the charge of representing only new minority groups looking for special favors. It linked the new immigrants—who provided most of the forum's emerging political muscle—to the older ones and argued simply and powerfully that they were the latest representatives of a long national tradition.

Under Swartz's direction, the forum grew in size and strength during the 1980s. This was a significant development because immigrants historically are a disenfranchised group. Only about one-third of them are actually citizens at any given moment, which means that two-thirds can't exercise political power through the ballot box. What's more, immigrants divided along linguistic, religious, and ethnic lines don't often think of themselves as a distinct class of people. Swartz began to change that by having local ethnic organizations talk to each other and coordinate political activity at the national level. Suddenly, thanks to Swartz, groups such as the New York–based National Coalition for Haitian Rights and the San Francisco Southeast Asian Community Center found themselves having an increasingly unified voice inside the Beltway.

As more immigrants came to the United States—about 15 million have arrived legally since the forum's founding—the influence of the coalition grew. Allied organizations, such as the American Immigration Lawyers Association and the National Council of La Raza, made similar gains. In 1990, Swartz courted conservatives and business groups for the first time to work with left-wing groups in defeating restrictionist legislation. They succeeded, and this union of political opposites has more or less stayed together under Swartz's leadership.

SWARTZ BECAME SO accomplished at orchestrating odd-bedfellow alliances on immigration that he started trying to do the same on other issues, though with less success. In the early 1990s, he reached from right to left on the issue of the flat tax, trying to convince liberal ethnic organizations that their members could benefit from tax reform. He made some headway, but the flat tax issue fizzled. Immigration remained his bread-and-butter cause, as well as the one he cared about most deeply.

Swartz formally quit the forum in 1989 but continued to maintain a strong presence as an independent operator. His greatest moment came in 1996, when just about everybody was starting to think that the politics of Washington had turned sharply against immigration supporters. Two politicians in particular, Sen. Simpson and Rep. Lamar

A key issue for Silicon Valley mirrors the Chamber of Commerce's labor worry: There aren't enough highly skilled workers in the United States to fill all the jobs cutting-edge firms routinely create.

Smith (R-Texas), sensed an opportunity to curtail both legal and illegal immigration.

Following the Republican victories of 1994, Simpson and Smith took over the immigration subcommittees in their respective chambers. Working together, they crafted a broad legislative package to combat illegal immigration that also would have lowered legal immigration by roughly one-third due to numerical reductions and regulatory restrictions. The pair figured that the unpopularity of illegal immigration and the perceived need to pass a bill—any bill—against it during an election year would encourage lawmakers to vote for the accompanying restrictions on legal immigrants. By the spring of 1996, it looked like Simpson and Smith had the votes to win. The White House signaled its willingness to sign the bill into law.

But Simpson and Smith ultimately failed, thanks to Swartz and his allies, among them Grover Norquist of Americans for Tax Reform, an influential conservative with strong grassroots connections and a direct line to the Republican House leadership. The bill's opponents successfully urged Congress to split the legislation in half and deal separately with legal and illegal immigration. This tactical move allowed worried lawmakers to pass an anti–illegal alien bill that included, among other things, an expansion of the Border Patrol. At the same time, it prevented cuts in legal immigration because there was much less political will to tackle that subject.

"We nailed them," boasts Swartz, who worked strenuously to keep his business and ethnic-group coalition together. He convinced each side that neither was served by selling out the other in a deal with Simpson and Smith. Although no clear party lines developed in Congress, most Democrats came out of the debate looking like supporters of legal immigration and most Republicans, fatefully, emerged as apparent detractors.

Pro-immigration forces never have had a stronger lobby in Washington than right now. An increasingly influential and sophisticated coalition of ethnic groups work in sync with a business community that is more supportive of immigration today than it has been at any time since the first part of the century. What's more, the Republican Party, which lately has been the political vehicle for immigration restriction, is eager to make amends with Hispanics who have abandoned the GOP in droves in recent election cycles.

THE BUSINESS LINK has proved vital. Immigrants typically gain admission to the United States because they have relatives living here or because they have special skills to offer. The ethnic organizations generally favor the former category, while business supports the latter. Whenever the immigration debate heats up, the two sides talk to each other but privately worry they'll be sold out. The National Council of La Raza fears that the National Association of Manufacturers will agree to support restrictions on family immigration in order to preserve or expand business immigration. The converse is true as well. The pro-immigration victories in 1990 and 1996 would not have been possible without support from business groups. Both sides have stuck together, and it's proven to be a mutually beneficial strategy.

One of the newest partners in the pro-immigration alliance is high-tech industry. The story of Silicon Valley's political awakening has been told before: Five or six years ago, computer companies and the federal government seemed content to ignore each other. Today, the Justice Department's antitrust actions against Microsoft and Intel are front-page news around the country. In between, a series of issues has made high-tech companies concern themselves with politics. In 1995, they fought off federal securities legislation. In 1996, they helped defeat California's Proposition 211, which would have made shareholder suits easier to file. Encryption and Internet taxation are perennial concerns.

A key issue for Silicon Valley mirrors the Chamber of Commerce's labor shortage worry: There aren't enough highly skilled workers in the United States to fill all the jobs cutting-edge firms routinely create. According to the chamber, 58 percent of companies face a skilled worker shortage today, compared to 28 percent three years ago. Since 1990, American companies have been allowed to recruit foreign-born brainpower through the H1-B Visa Program, which permits 65,000 talented immigrants to enter the United States annually. In 1997, for the first time, all 65,000 were used before the year was over. This year, they were gone by May 7.

This summer, the Senate had agreed to a bill to raise this limit to 85,000 for the rest of this year, then to 95,000 in 1999, 105,000 in 2000, and 115,000 in 2001 and 2002, before returning to 65,000 in 2003. The Clinton administration threatened a veto in July because of protests from labor unions. A vote may occur in the fall but even if it doesn't, a similar piece of legislation appears inevitable next year. The pro-immigration ethnic groups basically have sat on the sidelines during the debate.

A final factor in the transformation of immigration politics involves the Republican Party's changing attitudes. Although there remains plenty of diversity within the ranks of the GOP, Republicans have shifted from a soft anti-immigrant stance in the early 1990s under the tutelage of Simpson and Smith to a striking reluctance today even to raise the subject. They essentially have returned to the old Reagan approach of praising legal immigrants and criticizing illegal aliens, even though this masks growing opposition to immigration among movement conservatives who didn't feel strongly about it during the 1980s.

The party's troubles began with the 1994 vote on California's Proposition 187, a ballot initiative aimed at denying a range of services, including public education and non-emergency medical care, to illegal aliens. That year, Republican Gov. Pete Wilson, who has a knack for attaching himself to popular issues, wedded his uncertain re-election to the initiative. The referendum's great popularity—it passed with about 60 percent support—grew out of an understandable irritation at the fact that the federal government forced states and localities to pick up virtually all of the social service costs associated with illegal immigration. Many Californians did not think they should have to pay for expenses like schooling illegal immigrant children when the federal government, which is responsible for keeping illegal aliens out of the country in the first place, wasn't doing its job. In their minds, this was a huge unfunded mandate imposed from afar on California taxpayers.

Supporters of Prop. 187 weren't careful about distinguishing between legal and illegal immigrants—a point many Democrats exploited. One TV ad promoting Wilson's re-election featured a grainy black-and-white image of Mexicans pouring across the border, with the voice-over: "They keep coming." Wilson won in November with 55 percent of the vote, but his victory came with a price: plummeting support for Republicans among Hispanics. Only 23 percent of Latinos cast ballots for Wilson—about the same as his draw among self-described Democrats, according to the *Los Angeles Times* exit poll.

Other GOPers fared much better among Hispanics in 1994. Texas Gov. George W. Bush, winning office for the first time, captured as much as 40 percent of the Hispanic vote in his state. But Wilson seemed the rule, Bush the exception. (This is also one of the reasons Bush is the front-runner for the GOP presidential nomination in 2000—he's perceived as better able to cut into the Democrats' base of Hispanic support than any other Republican.)

Many Republicans nevertheless believed that adopting Wilson's political themes would serve them well. Wilson, after all, did win re-election. Then came the disastrous Simpson-Smith legislation, which failed to achieve much of anything apart from painting the GOP as unfriendly to the foreign-born. That same summer, the immigration debate popped up again in the context of welfare reform. Congress passed a law that contained provisions denying noncitizens access to food stamps, Supplemental Security Income, and federal cash support for the poor, elderly, and disabled. State governments also were given the authority to limit cash welfare, Medicaid, and other forms of public assistance. Even though many Democrats opposed the bill, President Clinton signed it. At the signing ceremony, however, he promised to repeal many of the sections affecting immigrants. Clinton thereby got credit both for achieving welfare reform and for defending immigrant rights shortly before his re-election. Congress, on the other hand, got credit for welfare reform and also blame for being anti-immigrant.

At the national level, Republicans paid a price for their failed attempt to cut immigration and their successful attempt to deny welfare to noncitizens. Hispanic voters flocked to the Democrats. In 1996, they gave 70 percent of their support to President Clinton, up from 55 percent in 1992. Republican candidate Bob Dole earned only 21 percent Hispanic support—a smaller share than any other GOPer on record. What's more, polling data suggest that the Democrats may have carried 85 percent of Hispanic voters who had just become citizens and that they also made deep inroads among the traditionally GOP-leaning Cubans in Florida.

There's a grand tradition in American politics of attempting to win the immigrant vote—even bribing editors of ethnic newspapers not to run ads from opponents, as was done in the 1912 presidential race.

EVER SINCE, THE Republican Party has engaged in a massive damage control operation. Political candidates in California have sprinted away from ballot propositions that allegedly run counter to the interests of the state's Hispanics. In 1998, Attorney General Dan Lungren, who is currently the GOP nominee for governor, publicly opposed Proposition 227, an initiative intending to eliminate bilingual education. (Other prominent California Republicans, such as Wilson and GOP Senate candidate Matt Fong, supported it.) Prop. 227, inspired by Latino immigrant parents in Los Angeles who boycotted a local public elementary school for not teaching their children in English, suggested an electorate more concerned about state-enforced multi-

The 20th century helped define the United States as a nation of immigrants. If today's patterns continue, the 21st century may find the United States calling itself a nation of permanent immigration.

culturalism than immigration levels. Polling sponsored by Ron K. Unz, a Republican who bankrolled the initiative, revealed that conservative anxieties about immigration would be substantially relaxed if the government didn't promote racial preference policies or bilingual education programs that refuse to teach kids in English.

Prop. 227 won with 61 percent of the vote in June. Most Latinos opposed it, despite pre-election surveys showing widespread sympathy for the cause. Lungren won only 17 percent of Latino votes in California's June 2 gubernatorial open primary, compared to 43 percent of whites and 39 percent of Asians, according to the *Los Angeles Times* exit poll.

In Congress, Republicans have spent much of the last two years undoing their welfare law as it applies to immigrants. Noncitizens who were living in the United States at the time of the bill's passage are now allowed to retain most of the benefits Congress had stripped. (To Republicans' credit, those who weren't in the country at the time now find it more difficult to receive welfare than immigrants once did.) The upshot is a political disaster for the GOP: It spent an enormous amount of capital passing the restrictions, which are sensible from a public policy perspective. Then it repealed most of what it had done. So Republicans earned an anti-immigrant political tag and two years later do not have much to show for it—except for a bad reputation among Hispanics.

There's a grand tradition in American politics of attempting to win the immigrant vote—even bribing editors of ethnic newspapers not to run ads from opponents, as was done in the 1912 presidential race—but the GOP lately has succumbed to blatant pandering. Last year, Congress increased the annual appropriation earmarked for bilingual education to more than $300 million. Today, House Speaker Newt Gingrich gives serious consideration to the disastrous idea of Puerto Rican statehood, promises to settle the land claims of Mexican Americans who say their ancestors' property rights were violated under provisions of the 1848 Treaty of Guadalupe Hidalgo, and regularly issues press releases in Spanish. (These releases, incidentally, often contain amusing grammatical errors. One, celebrating Cinco de Mayo, asserted that the holiday honoring Mexico's defeat of French invaders in 1862 resulted in "the right of the people to personality determination," instead of self-determination. Another referred to Gingrich as "*Hablado*," which is Spanish for windbag.)

THIS ISN'T TO say that nobody tries to offend the immigration lobby anymore. Lamar Smith is sponsoring a modest naturalization bill meant to clean up citizenship fraud. Rep. Steve Horn (R-Calif.), reacting to evidence of illegal aliens' voting in 1996, wants voters to show identification before they cast election ballots. This proposal remains a legislative long shot, though it may yet find its way into a campaign finance reform package.

Few pro-immigrant groups, and none of those on the left, like these small-bore proposals. But having defeated recent attempts to cut admission levels, they can hardly complain about where they're sitting. One of their major concerns right now is to block Smith's effort to make elderly citizenship applicants have their fingerprints taken—something they're currently exempt from doing. "Many elderly applicants have arthritis and other conditions which make them time consuming, if not impossible, to fingerprint," complains one backgrounder on the Smith bill. That about sums up the gravitas of the immigration debate today: Should seniors trying to become citizens have their fingers stained with ink?

Big pieces of immigration legislation tend to come along every four to six years: 1980, 1986, 1990, 1996. It's too soon to expect another major package right now, and the first rumblings for one can't be heard anywhere on Capitol Hill. But with the economy humming and a pro-immigration political structure firmly in place in Washington, odds are immigration levels won't fall anytime soon. They may even go up—perhaps by a lot—in the next decade.

The 20th century helped define the United States as a nation of immigrants, even though relatively few came for nearly half of it. If today's patterns continue, the 21st century may find the United States calling itself a nation of permanent immigration. In the opening words to his Pulitzer Prize–winning 1951 book *The Uprooted*, Harvard historian Oscar Handlin famously remarked, "Once I thought to write a history of the immigrants in America. Then I discovered that the immigrants *were* American history." At the end of the 20th century, it looks like immigrants also may be the American future. ◆

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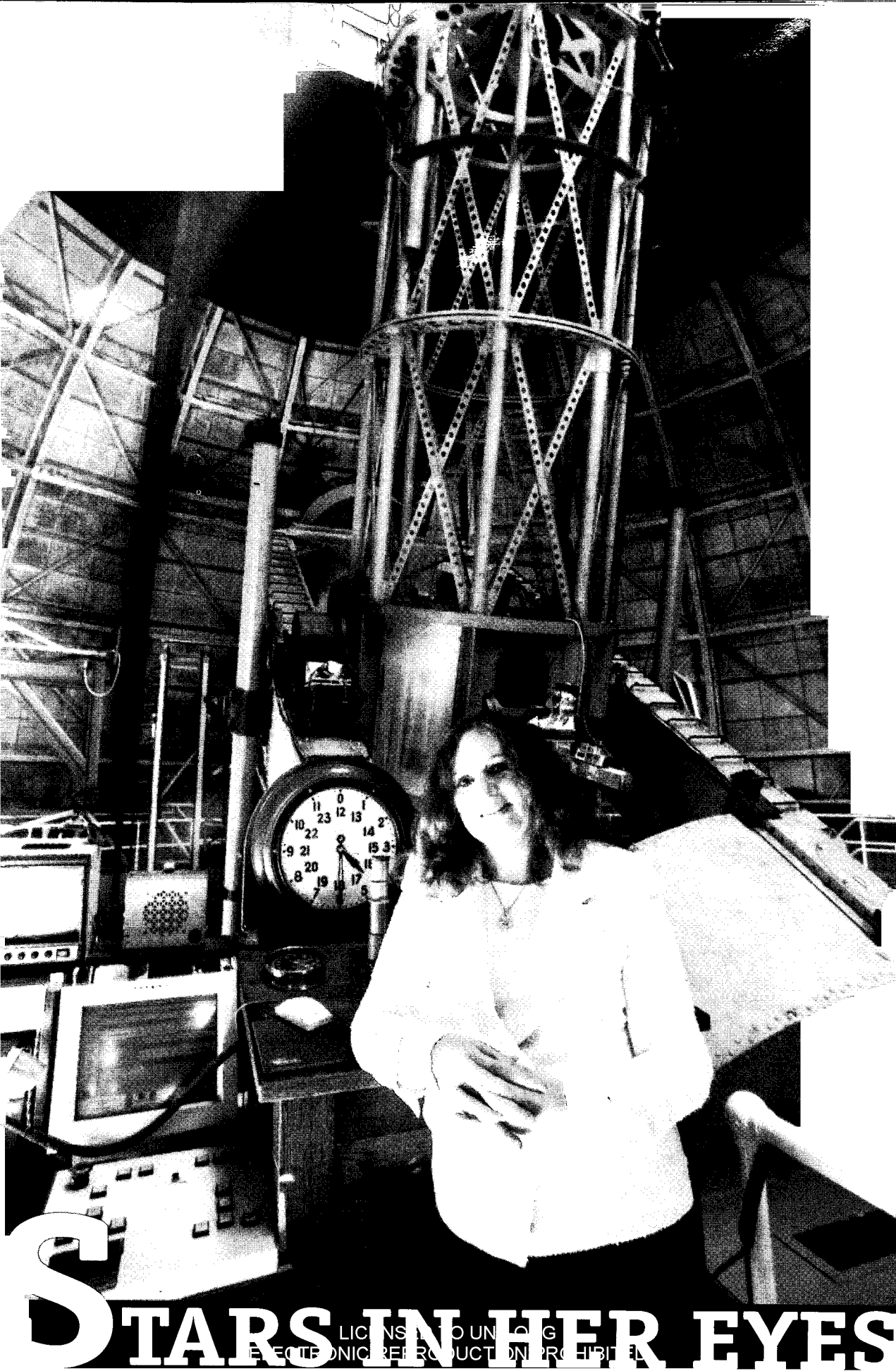

STARS IN HER EYES

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"A brilliant mix of theory and practice, this is a book you will share with your friends."

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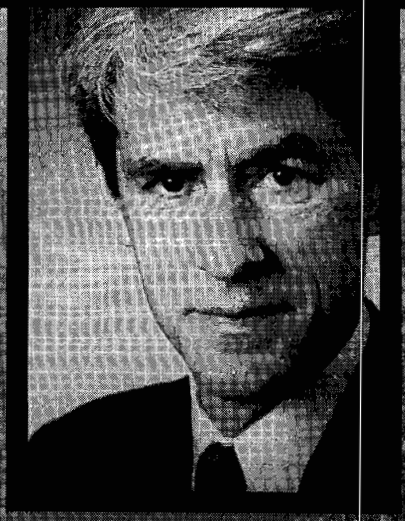
The welfare state rests on the assumption that people have the right to food, shelter, health care, retirement income, and other goods provided by the government. David Kelley examines the historical origins of that assumption, which, he shows, is deeply flawed. Welfare "rights," he argues, are incompatible with freedom, justice, and true benevolence, and they have damaged the genuine welfare of those who can least afford to become dependent on the government.



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"By explaining the tradition of liberty rights and the economic system of capitalism that accompanies it, Kelley shows 'welfare' rights to be both an ethical and an economic sham. Kelley argues that individualism is at odds with neither morality nor community. This is a clearly written work that appeals to common sense."

—Douglas B. Rasmussen
Professor of Philosophy
St. John's University

"Anyone interested in the moral legitimacy of the welfare state must deal with the arguments of this book."

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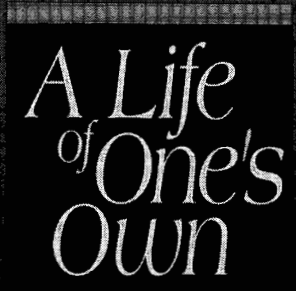

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Astronomer Sallie Baliunas on sunspots, global warming, and the benefits of privately funded science

Interviewed by Virginia Postrel and Steven Postrel

When she became an astronomer, Sallie Baliunas (baliunas@cfa.harvard.edu) never thought she'd be posing for magazine photos. But her life as a scientist hasn't been a matter of pure research. In her quest to study the stars, she has found herself drawn into the world of entrepreneurship and public policy.

An astronomer at the Harvard-Smithsonian Center for Astrophysics in Massachusetts, Baliunas is also the deputy director of the Mount Wilson Institute in the San Gabriel Mountains north of Pasadena, California. She spends about a week a month on the West Coast, using Mount Wilson's historic 100-inch telescope to study "sun-like stars." Baliunas came to the observatory as a graduate student in 1977. On her very first night, a lightning bolt struck a tree outside the dining room. "All the windows in the building were shattered from the shock wave of the tree disintegrating," she recalls. "This was an omen whose meaning was not clear until years later."

The observatory where modern astronomy was born would go through similar shocks in the years to come, as its owners turned their attention elsewhere. But for the dedication of a handful of technical staffers and astronomers, Baliunas among them, Mount Wilson would have been essentially abandoned. Instead, the observatory has not only a new lease on life but some of the best observational equipment in the world. The reborn facility is demonstrating how private funding and advanced technology can nurture innovative science.

Baliunas's own work benefited from Mount Wilson's years of neglect. Telescope time is rare, and few astronomers have the luxury of studying the same stars night after night, year after year. She's the first to admit that her research "could only have been done at an essentially 'abandoned' facility, where the competition for telescope time had disappeared." Baliunas is returning the favor, working without pay to raise funds, improve equipment, and manage the operations so such long-term research can continue. She never expected to be a manager but, she says, "The choice seemed clear: either grow the observatory or lose the research program."

In between observing and management, Baliunas can also be found testifying before congressional committees and giving papers at conferences on global climate change—a subject she was drawn to by her research on the sun's fluctuating magnetic field. She is a leading greenhouse skeptic. How, she wondered, could climate models be so specific when we hardly understand the sun or its effect on the earth? Baliunas talked about this and other questions with REASON Editor Virginia Postrel and her husband, Steven Postrel, an economist who teaches business strategy at U.C.-Irvine, under the Mount Wilson dome in late June.

PHOTOS: JONATHAN NOUROK

Reason: What do you study?

Sallie Baliunas: I'm interested in why the sun has a regular cycle of magnetism. There's a clock, so to speak. Sunspots come and go every 11 years, and the sun's energy output changes in step with those changes in magnetism. The sun also changes on longer time scales. That has an influence on the earth's environment. So the question is, Why does the sun do that? There is no good basic theory that says why the sun would have a magnetic clock.

Reason: So you look at other stars to try to figure out

what's going on with the sun?

Baliunas: Right. Here's an analogy. You're an extraterrestrial and you come to Earth, and you have 24 hours and you want to study the life cycle of a human. You can do one of two things. You can sit and follow one human for 24 hours and watch tiny microscopic changes in that human, or you can gather together a whole town and take information and look at the commonality. You can say, here's an infant and he needs to be taken care of, and here's a kid, and here's a young adult, and put together a picture of the human life span that way. I look at what I call "sun-like stars" at different phases of long-term evolution. It's a great deal quicker than waiting around for the sun to do something.

Reason: Have you gotten any interesting results?

Baliunas: My mentor here—who is buried outside the dome, Olin Wilson—asked the question, Is the sun's 11-year cycle common on other stars, or is it something peculiar about the sun? He began a program here at the telescope in 1966 to follow 100 stars, month after month, year after year. When he retired, I came aboard, and now we have over three decades of records. We see at first glance, what the sun does is not unique. It's a universal trait.

Reason: Eleven years?

Baliunas: Eleven years, on average, if the stars are as old as the sun is. Age seems to make a big difference. When the sun was younger and life was forming on Earth—the sun was about a billion years old, about 3.5 billion years ago—the sun was spinning several times faster than today. That meant that the dynamo that powers the surface magnetism was working much more efficiently, and so the magnetism was much higher. There were more sunspots, there were more high-energy particles, there was more variability of ultraviolet and X-rays.

Reason: How would that affect conditions on the earth?

Baliunas: In several ways. One way is, with that higher amount of activity, there's much more X-ray and ultraviolet flux. The X-ray flux would be about 100 times larger than today. That energy certainly has biological effects—effects on DNA; it can even kill cells. So the environment was much more dangerous to life than today. The ultraviolet fluxes would also be larger, maybe 10 times larger. In addition, the changes over time scales of years or so would also be much larger. So not only are they at a higher sustained level, but they vary, and the variations are larger. The total energy of the sun would have been varying by several percent over a time scale of a few years, during the sunspot cycle. That would play havoc with the climate.

Reason: You've been writing some papers suggesting that terrestrial climate today may be affected by solar variations. In fact you've suggested that some of the warming that people have attributed to burning fossil fuels may actually be the result of natural fluctuation. How did you get involved in that?

Baliunas: Nearly 15 years ago, I started hearing that there now were models—simulations—of the earth's climate system that could be projected 100 years into the future. I was curious and thought, "Wow, that's a significant leap in meteorology and climatology. I want to learn about that." So I began looking at the models and how they can make predictions so far in advance. I also began to look at climate simulations run on computers and ask the question, What is the natural level of climate change? What is the influence of the sun?

The reason for asking how the sun might influence it is that there is lots of direct evidence that the sun has an impact. For example, the sun changes in its brightness [an average of] every 11 years with the magnetic cycle. We know that from recent satellite measurements. But going back further in time, we know the sun changes every few centuries. During the 17th century, which was an unusually cold period on Earth, the sun had very little magnetic activity for about a century—the Maunder Minimum, coincident with the Little Ice Age.

Reason: What is the Maunder Minimum?

Baliunas: The Maunder Minimum is this episode in the 17th century where the 11-year cycle was suppressed—was very quiet—and the sun dropped to very low levels of magnetism.

Reason: The 11-year cycle disappeared?

Baliunas: Almost. There were certainly long months of time, and even a decade toward the end of the 17th century, when sighting a sunspot was very rare.

Reason: Is there any theory for what caused that?

Baliunas: That's the hot question. We have to explain the 11-year cycle in the first place. There's a crude picture that says we know the sun's magnetism changes with time because of the way the sun spins and the way the outer layer rolls with convection. Beyond that, it's not a good theory. Making an 11-year repeating cycle is difficult in most theories. Making it disappear every few centuries is even more difficult.

Reason: How do you know magnetic records of the sun from the 17th century?

Baliunas: The records of sunspots go back to 1609, to Galileo's day, and that's almost long enough to see this episode. But we have some unbiased records: The sun has a wind that carries the magnetic field toward the earth and acts as a shield. There's a rain of cosmic rays coming from deep space. When the sun's magnetic field is strong, these cosmic rays tend to be deflected. When the magnetic field is weak, these cosmic rays penetrate the upper atmosphere of the earth. When the cosmic rays come in, they make radiocarbon in the upper atmosphere, and that carbon-14 ends up in carbon dioxide molecules. It's breathed in by a tree and put in its tree ring, so the amount of carbon-14 over time in tree rings tells you what the sun has been doing in the past. Those records trace the sun back about 10,000 years. So we know the ups and downs of the sun's magnetism for the last 10,000 years or so.

After looking at this, I began to ask, How well do the climate simulations handle this relatively new knowledge about the sun? And the answer is, not very well. We don't know the mechanism for change in the sun very well. We don't know the response of the earth to such changes. So I thought, How do you make predictions 100 years in the future if you don't even know what all the sources of change are?

Reason: If the magnetic activity on the sun is changing, what mechanisms are there that might affect the earth's climate?

Baliunas: It depends what time scale one is talking about. The sun brightens and fades over the sunspot cycle, the 11-year cycle. But also the intensity of the 11-year cycles has been building over the centuries.

"If you look at the temperature records, it's quite clear: All the warming occurs early in the century. But most of the greenhouse gases are put in the atmosphere after World War II."

Reason: What do you mean by "intensity"?

Baliunas: Looking back several hundred years, the sun's magnetism is at an all-time high. The last four peaks have been quite high.

Reason: Do these fluctuations produce a big effect?

Baliunas: It's relatively small from cycle to cycle, but we estimate that from the 17th century to now it could have been four or five tenths of a percent of the sun's energy output. Run that through a climate model, and that's enough to explain the temperature change.

Reason: Using the current models...

Baliunas: Using the current models...

Reason: Which you're not sure are right anyway...

Baliunas: Nobody's sure—all models have similar problems. We're saying [with] a few tenths percent change, which we don't think is unreasonable for the sun, you can explain everything. Now that's not the only mechanism. That's the first one, which one might think of as brightness change. There's some new work coming out of Europe on clouds. The amount of cloud coverage on the earth is changing by a few percent every 11 years —it's anti-phased with the cycle. The latest idea is that it's the sun modulating the cosmic rays that are coming in making nuclei of clouds.

So after looking at all these vast unknowns, I then saw the key problem for the greenhouse extremists. We always read about how the temperature has warmed about a degree Fahrenheit—a half degree centigrade—in the last 100 years. But if you look at the temperature records, it's quite clear: All the warming occurs early in the century. But most of the greenhouse gases are put in the atmosphere after World War II, in the last 50 years. So they can't cause most of the warming of the last 100 years. Something else had to. The sun's changes fit that very well. That just may be a coincidence, but that's what we're pursuing.

Reason: What has the sun's effect since 1940 been?

Baliunas: That's a harder question because we consider changes of the sun on time scales of several decades or more. So asking me what has gone on since 1940 is almost at the limit of what I'm looking at. If you want to look back over the last 100, 200, or 300 years, it's a little easier for me to talk about it.

Reason: Would this solar variability research say anything about what would happen if we were really to increase greenhouse gases in the atmosphere a lot?

Baliunas: That experiment has been done. We've increased the amount of greenhouse gases by an equivalent of going halfway to a doubling of carbon dioxide—and doubling is the benchmark that everyone talks about. And then you look at how the earth's temperature has responded, and it has not warmed more than a tenth or two-tenths of a degree. So a simple back-of-the-envelope calculation says a doubling is a few tenths of a degree. That's not significant, because it's not noticeable above the natural background changes.

The real test of this is the last 20 years, with very precise satellite measures of the earth's temperature made globally. The global average temperature of the atmosphere, just above the surface of the earth, has not warmed at all. There's been no warming trend in the past 20 years, and the models all say that there should have been a warming of several tenths of a degree centigrade in that time.

Reason: I've seen flat denials of this by people who claim that the satellite data are either inaccurate or who say they don't care about the air up there, they care about the air down here.

Baliunas: It's true that people live at the surface and not where satellites measure, which is a few kilometers above the surface. But the models make predictions at that layer of the atmosphere, and most of the models make a prediction that that layer should be warming more than the surface, so in fact it's a good test of the models. The satellite data make measurements essentially globally, unlike the surface data, which are very, very irregularly sampled and spaced and have significant systematic errors.

Reason: Where do those systematic errors come from?

Baliunas: There are systematic errors arising, first of all, because of coverage. There is very little coverage of the polar regions of the earth and there's little coverage of the southern hemisphere oceans. People don't live there; there are no thermometers there. But the satellites measure these areas dutifully. Systematic errors also come from the urban heat island effect, which says that as cities have grown—buildings, concrete, pavement, tree clearing—they have warmed that environment. So you can look at the population growth in a city and you can look at its temperature just going hand in hand.

Reason: Critics of the satellite data have argued that you get different results at different altitudes that satellites do reach.

Baliunas: That is true.

Reason: And the atmosphere has warmed at certain levels.

Baliunas: No. There's been no warming in the satellite data. There's been a cooling in the lower stratosphere, and no warming in the lower troposphere. And at the surface, I should mention that the continental U.S. has very good measurements over the last 100 years and there's been no net warming there either.

Reason: How does this fit in with your solar explanations?

Baliunas: We're trying to subtract the sun's influence [from climate fluctuations caused by other sources]. The sun is particularly good at explaining this early 20th-century warming, which can't have been caused by the greenhouse gases. If we had a good prediction for what the sun would do next, given the past calibrations that we've done, we then could make a prediction. But we're not at the point where we can predict what the sun will do 50 years from now.

Reason: There was an International Panel on Climate Change, whose results have been widely disseminated. What do you think about the IPCC report?

Baliunas: The IPCC report actually is very careful to say that the models have not been validated. That tells you that you can't make a prediction with them. The executive summary says that there's a discernible human influence, but the information in the chapter on which that conclusion was based has been overturned by the scientific process. The report is obsolete.

Reason: What overturned it?

Baliunas: The executive summary's conclusion was based on the results of new climate simulations that made predictions both in three dimensions and time. That's the way to go: Global warming won't be uniform over the globe—certain areas or different levels of the atmosphere will warm more than others. So you look at the regions that are supposed to warm first—for example, the Arctic or, in the case of that report, a region of the lower atmosphere over the southern hemisphere oceans. And in the report, it was claimed that there was good agreement between the theory and the observations. But when that underlying paper was published, it was very quickly overturned by a longer stretch of data.

Reason: By whom?

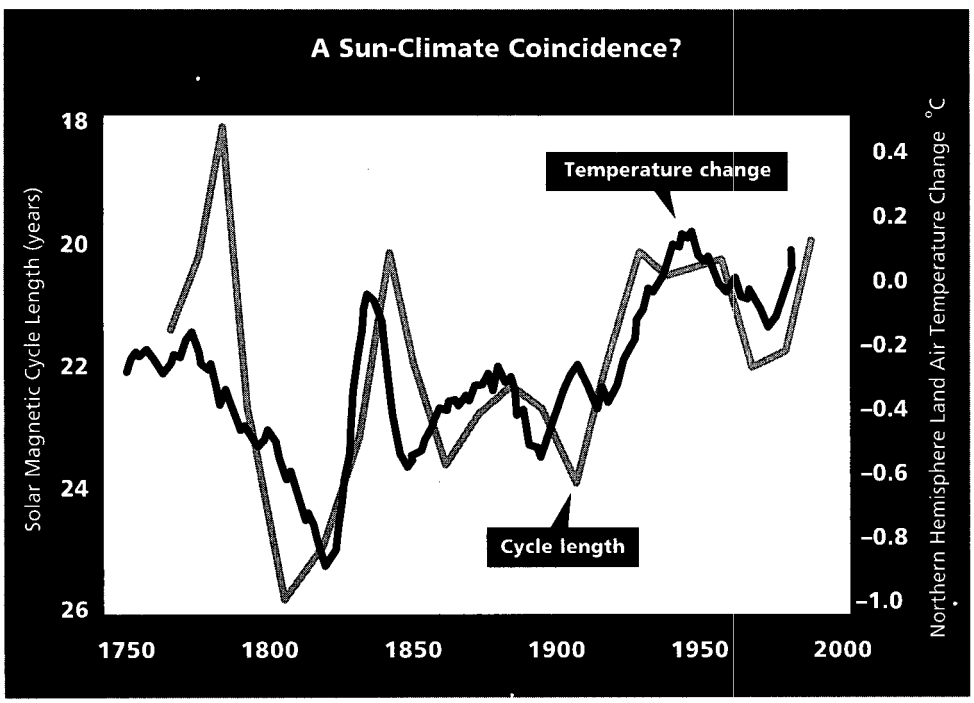
Baliunas: One paper is by Pat Michaels and Chip Knappenberger. That was published in *Nature*.

There had been a short uptick in the temperature of that region, but when looking at a longer temperature record that was both earlier and later, it was seen that that uptick was just part of a long-term null trend. So the models had predicted wrongly. There had been no increase in that area.

Reason: The idea of looking for places where the models make strong predictions is that if it's right anywhere it should be there?

Baliunas: It should be right where the warming is felt first—for example, the polar regions, the Arctic. In the last 50 years, the Arctic has cooled. And the models say it should be warming profoundly. Then the area over the southern hemisphere oceans should be warming, but it has not been warming either.

Reason: There's a particularly compelling figure you've used in your publications, which is a graph of North American land temperature data vs. the magnetic activity of the sun, with multiple turning points that are coincident. [See graph.] First a technical question: What are the units for the magnetic activity?



Baliunas: This is the length of the sunspot cycle. The cycle averages 11 years or, if you count polarity, 22 years. But the cycle can be short, say, eight years, or it can be longer, say, 12, 15 years. So you look at the length of the cycle and plot that to see the relation.

Reason: If the cycle is short, what does that mean?

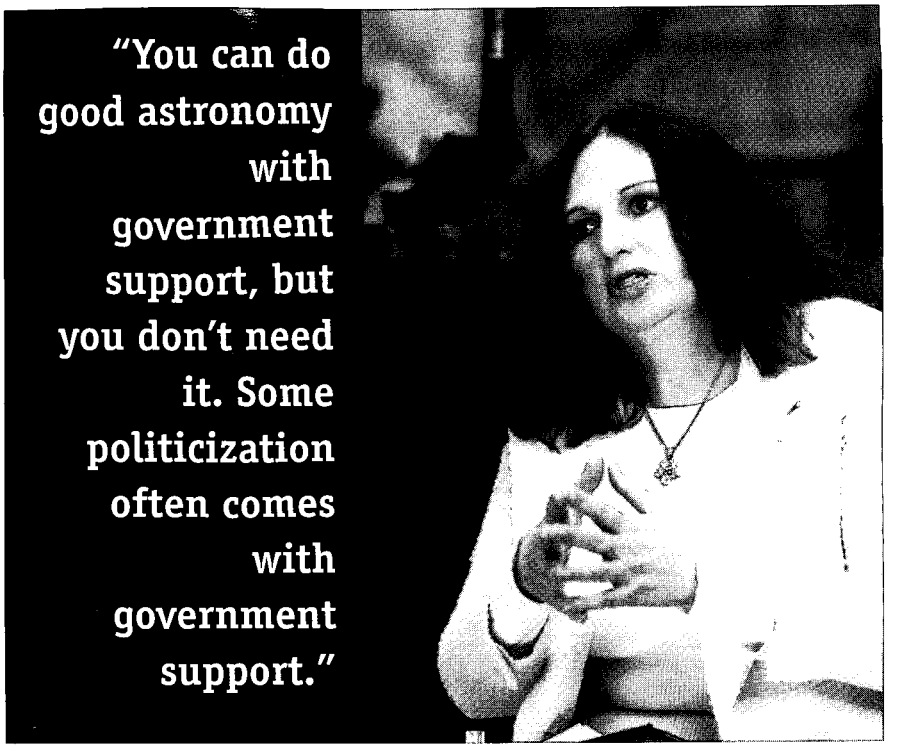
Baliunas: If the cycle is short, the sun's magnetism is much more intense, and that leads you to the expectation that the sun's brightness would have been greater than if the cycle is long.

Reason: And that correlates beautifully with the turning points...

Baliunas: Right, so the mechanism is that you're still seeing changes in the brightness of the sun, and you're just using as a marker for that something we have a measurement of going back that far, which is the length of the magnetic cycle.

Reason: Given that you've said that the radiant effect, just the pure heat, probably isn't enough to explain it, that's a very striking concordance.

Baliunas: The [radiant] effect is borderline. And it may be that we have the wrong mechanism or that our model has the wrong response, since nobody's model has the right response. Some people have worked on not just looking at the total energy of the sun but, say, a portion of spectrum such as the ultraviolet. A woman in England, Joanna Haigh, would say that the ultraviolet changes in sun, although they seem small, profoundly affect the ozone layer and that those changes in the ozone layer then change the dynamics of the climate system strongly. We may be looking at the right marker but the wrong reason, and that may be why models are still equivocal.


"You can do good astronomy with government support, but you don't need it. Some politicization often comes with government support."

Reason: Mount Wilson was closed for a while...

Baliunas: The 100-inch telescope was closed in 1986. The owners, the Carnegie Institution, had built a large telescope in Chile, and to conserve resources, they wanted to focus on that. By then, a group of us from other universities were already using the other resources on the mountain. I was working my long-term project on the 60-inch telescope; the solar towers were in use. The 100-inch telescope was closed for about eight years while we raised the money to refurbish the telescope, put in modern computerized pointing, and also redirect where it was going. It wasn't going to do cosmology at the faint edges of the universe—the telescope was now only a modest-sized telescope compared to the 10-meter telescope [at Mauna Kea in Hawaii], and the lights of L.A. were getting too bright. So it took a turning point around 1991.

When George Ellery Hale founded the observatory, he noticed that there was something priceless here: The air is very still, calm, and steady. That means the images from space, celestial objects, as they come down through the atmosphere are least disturbed. We have clarity here that is unmatched by any site in North America, and it's on par with the best sites in the world like Chile and Hawaii. It's a little more convenient being here than at, say, 14,000 feet in Hawaii. So that still air, which astronomers call the "seeing," and the development of technology, opened up some new areas.

We now do high-resolution astronomy. This 80-year-old telescope has now been sharpened up so it takes out the blurring effect of the earth's atmosphere, and it sees images as sharp as if it were out in space. That took about $3 million of mostly private money and some special high-tech equipment developed mostly by the Defense Department during the Strategic Defense Initiative days.

Reason: When did that "adaptive optics" system go in?

Baliunas: This became operational in late 1995.

Reason: Have people using it made any noteworthy discoveries?

Baliunas: We've got the first map of the surface of the asteroid Juno, for example. This is one of these large asteroids very similar to the junk out of which the earth was made. But unlike the earth, which has been processing everything with plate tectonics and its ocean and atmosphere, this asteroid sits out in space virtually untouched in 4 billion years. So you're looking at the primordial state of what made the earth. We're looking at the mineralogy of that.

We're also looking at the volcanos on one of the satellites of Jupiter, which blow up because it's in such proximity to Jupiter. The gravitational pull of Jupiter makes a liquid core in that little satellite.

We're looking at other stars, how stars form, what kind of dust and debris they have around them at various stages. We're taking a census of all the nearby stars and whether or not they're double or triple star systems.

Reason: Is that easier to tell with this technology than with what had gone before?

Baliunas: Yes, because you can look closer in toward the vicinity of the star, and that information had been lost in the blur.

Reason: So the main limit is how far the telescope can see?

Baliunas: Yes, how far, but we can see detail lost by bigger telescopes.

Reason: Why is that?

Baliunas: Because the atmosphere sets the limit of the detail. When the big telescopes get this kind of technology going they will start retrieving it, but right now we're one of the very few that can do this.

Reason: Is the technology making astronomy significantly

less expensive to do?

Baliunas: You get images as sharp as if the telescope were in space, for a capital cost of $3 million for the new equipment and the retrofits—compared to the space program. A launch of the Shuttle is half a billion dollars, and if you settle for a Delta rocket, it's a $100 million dollar launch, plus building space-worthy equipment. So it's extremely cost-effective to do things on the ground when you can. This makes the space instruments more effective, because they focus then on the things that they do best.

Reason: You're about to open something called the CHARA Interferometer. What is an interferometer?

Baliunas: An interferometer is a clever way, a very sneaky way of getting detailed information on objects in space without spending a fortune in building a telescope. The optical interferometer will be six smaller telescopes, each one meter across, spread out over a radius of 1,000 feet. And then the light of each individual telescope is brought together and stacked, so the crests and troughs of the waves of light match up. The computer is very carefully measuring the distance to each telescope, which changes subtly. When you do that with these smaller, inexpensive telescopes you get the equivalent detail—spatial detail—as if you had a 1,000-foot diameter single telescope.

Reason: What makes that possible?

Baliunas: It's the ability to stack the wavelengths of the light coming to each telescope with a tolerance of one four-millionth of an inch. That requires sophisticated computer control, engineering control, and lasers all working to calculate the distance to stack these beams of light.

Reason: What sort of research are they expecting to do with that?

Baliunas: One of the more interesting things is to try to start looking for planets around other stars—direct sightings.

Reason: What is it about this array that will make that more likely?

Baliunas: The array can see spatial detail much finer than any other optical ground-based or space-based telescope. It can see *very* close in to the vicinity of these stars.

Reason: So it can see better than the Hubble?

Baliunas: Sharper detail, finer detail. It could see something as small as an astronaut's bootprint on the moon. And that's something like 100 times finer detail than the Hubble can see.

Reason: But it can't see as far?

Baliunas: Not as far. Technology is making niches, as usual, and this is our niche: fine detail, of objects either in our galaxy or nearby galaxies. Whereas Hubble can see to the faint reaches of the far universe.

Reason: What is your operating budget?

Baliunas: To operate the whole facility is about a million dollars a year.

Reason: Where does your money come from?

Baliunas: It's mostly private foundations and generous individuals, primarily in Southern California. Occasionally we have some government grants from the National Science Foundation or NASA to do some specific project, but most of it's been private.

Reason: This reopening was very much a private venture.

Baliunas: Yes, the idea was to keep Mount Wilson as an option in private hands. The national observatories have, as their obligation, to serve the wider [astronomical] community. That's terrific, but it also means that servicing as many users as possible becomes an important focus for them, which means short-term observing. We prefer to serve important projects that can't get done at the other sites. A long-term project—say, my project, which is 32 years in duration—is a different kind of project.

Reason: A lot of people have the idea that because of the capital equipment costs, you can't do good astronomy without government support.

Baliunas: I disagree with that. You can do good astronomy with government support, but you don't need it. The Keck telescope [at Mauna Kea] is an example of something that was privately funded. And in fact, some politicization often comes with government support.

Reason: Can you give me an example?

Baliunas: You have to write proposals to get telescope time [at the national observatories]. You often have to write them a year in advance. The subscription rate is a factor of several to one, overburdening the time. Three-quarters of the proposals have to be thrown away. So if you want to do something, you might have to submit a proposal several years in a row. It might be four or five years before you get it. The demand is so great that sometimes the tendency is to divide up the time in some "equitable" way, so that means you end up with two or three nights. You arrive and it's cloudy. You have to start the process over again next year.

So that's something we wanted to try to provide to the community—another avenue, where if you wanted 100 nights of telescope time, we'd be in a position to be able to work that out.

Reason: I've heard a lot of scientists in different fields complain that government funding is distorting science, distorting the peer review process. What is your take on that?

Baliunas: There is almost a crisis in the number of scientists and the amount of funding available. There's been a population explosion in the number of scientists practicing, and the amount of government resources available has been not in that proportion.

For example, NASA's budget in the Apollo program days was a much higher percent of GNP than it is today. A lot of astronomy funding has historically been a fixed fraction of the NASA budget, so that means that as a percentage of GNP, that number has gone down in real terms, but there are more people competing for those dollars. So now when you do proposals, you don't write an open proposal. You don't say, "I have this great idea," and then write it down. You look to see what targeted program your idea might fit into, and if there's not a targeted program, you go try to lobby for one to be made.

Reason: What is a targeted program?

Baliunas: For example, discovering extrasolar planets is now something very interesting, so NASA has an origins program encompassing that. But before a specific program existed for extrasolar planet studies, such research was difficult to fund. If you're doing something that is radically different, it might not fit into one of the bins. You have to bend your science into one of those bins, or you have to work on getting a new bin accepted.

"Mount Wilson is where astronomy took its modern turn. Its founder, George Ellery Hale, wanted to know, How big is the universe? Where did it come from? Where is it headed to?"

Some of the targeted areas are so overburdened that nine out of 10 proposals get rejected. I've been on panel reviews where there were many excellent proposals, but you have to make a decision and throw out 90 percent of them because the budgets can't take them all.

Reason: You first came to Mount Wilson because your graduate school adviser told all his students that you should do some observing at the "mecca of modern astronomy." What makes Mount Wilson the mecca?

Baliunas: Mount Wilson is where astronomy took its modern turn. Astronomy used to be, in the 19th century, cataloging—a very personal, artistic journey of looking at the sky. George Ellery Hale, who founded the observatory, changed all that. He thought that there was something to be learned from astronomy other than positions. There was what powered the sun, the changes of the sun, how did they influence the earth, how did life begin here, and what influence does the space environment have on those larger issues? What are the stars? How big is the universe? Where did it come from? Where is it headed to? The idea of the evolution of the physical universe was very important to Hale. He was influenced by Darwin's *Origin of Species.*

Hale was a brilliant scientist. He worked at Yerkes Observatory in Chicago—he was born in Chicago, went to MIT. He went back to Yerkes and built the largest telescope in the world there at the end of the last century. That was the 40-inch Yerkes Refractor Telescope. He found Chicago not to be the best environment for doing astronomy, because of the high percentage of cloudy nights. He went with a committee on a site-testing tour, and decided that this mountaintop had images through testing telescopes that were the finest of any site that they had ever seen. He decided that this would be a good place to found the observatory.

He packed up the solar telescope and brought it out here in 1904. He took a great risk because at that time he had very little commitment of any funding. But his themes were always, "Make no small plans, dream no small dreams" and "More light." His father was fairly well-off and had given him a 60-inch mirror blank in 1896 as a birthday present. He was again going to build the largest telescope in the world, the 60-inch telescope. It took him 10 years to find a site, and another four years to find the money—much of which he borrowed from his friends, neighbors, and relatives—to finally get the 60-inch telescope opened in 1908.

Reason: How much did that cost?

Baliunas: I know there was a donation of $50,000 for the 100-inch mirror; the 60-inch mirror was $2,000 in 1894 dollars.

Reason: Mount Wilson is at the top of a mountain and even today, it's a bit of a haul up a winding, fairly narrow road. Certainly in 1908 or even 1917, it was worse. How did they build the observatory?

Baliunas: The builders had this vision and just had to overcome terrible conditions. There's a hiking trail that goes up from Sierra Madre—that was the old toll road, a private road in those days—and everything had to be brought up either in your backpack or by mule trains. Everything had to be broken down into small bits and then built in place on the mountain. You see the amount of massive concrete and steel structures. They had to haul everything up, and it took at least a good day to get up the mountain. Even though it was a seven-mile trail, it was very steep. By 1910, there were primitive trucks and the trail had to be widened by human labor, and then things could be brought up that way.

Reason: Who built the observatory—the 100-inch telescope?

Baliunas: They went to a steel company in Chicago, named Morava, for the dome. They built and assembled the steel dome and structure in Chicago, then took it apart and brought it up the mountain. The concrete was put in place by the observatory staff—they had a concrete plant up here. The whole telescope was designed by the observatory staff. The mirror was cast in

"Edwin Hubble took the last step of the Copernican revolution: The universe is not finite and static. It's infinite and expanding, and what's worse, it had a beginning, which means it's not eternal."

France, and it was ground to its fine shape down in Pasadena by the observatory staff. The telescope tube—the structure that holds the mirror and moves—was built by the Fore River Shipyards in Massachusetts, which built battleships. The telescope itself weighs 100 tons, the moving part of it—the tube.

Reason: This was all done with private money?

Baliunas: It was all private. By 1908, Hale had convinced a businessman in Los Angeles, John Hooker, to pay for the casting of the 100-inch telescope, and he got Andrew Carnegie to invest in the observatory. This is his third time he built the largest telescope in the world, and the fourth one is the 200-inch at Palomar Mountain.

Reason: You told a story about the Huntington Library in Pasadena that indicated that Hale had a dim view of government control.

Baliunas: He was talking to Henry Huntington, who had this fabulous collection of rare books. Huntington was thinking about what to do with them after his death, and he began thinking of a publicly owned—probably city-owned—library where people could use them. Hale had a view that once you entered the political process, it was a dangerous thing. He suggested to Huntington that instead, why not have a private library, for which they would raise the funds, to be run by scholars who would ensure public access. And that's worked very well to this day.

Reason: He was a little nervous about challenging Huntington—is that because Huntington also supported the observatory?

Baliunas: No, I think he just respected Huntington's desire to do what he wanted with his own property. But Hale did say, "Realizing the menace inherent in political control, I took my life in my hands and wrote him a letter."

Reason: The 100-inch telescope here opened when?

Baliunas: It opened in 1917. And this is where Edwin Hubble made his discoveries of our place in the cosmos.

Reason: Who was Hubble?

Baliunas: Edwin Hubble was an astronomer who came here in 1919 and made modern cosmology. In 1900, no one knew what a galaxy was. It's a term we all use, but it wasn't in use then. The Milky Way, which was thought to be about a 100,000 light-years across, was all there was of the universe. The universe was static, unchanging, eternal—it had always been. And it was finite, something you can grasp. A hundred thousand light years is not so bad for the human mind to wrap around.

Hubble came along, and by 1923 he was interested in something called *nebulae*, the Latin word for clouds, which were faint, pinwheel smudges that one would see through the telescope. Hubble looked at the Andromeda nebula, which is in the constellation Andromeda, and found a special kind of star. The star changes in brightness rhythmically. By measuring the period, you know the intrinsic brightness of that star. I use this example: When one drives on the road at night and you see the streetlights or the lights of an oncoming car, you automatically think, "I know how bright a streetlight is when it's next to me," or how bright headlights are, so you make a mental calculation as you look at how dim the lights are; you say, "OK, it's far away," or "It's near." The word in astronomy is "standard candle," but I've always found that not to evoke the right image. It's something whose intrinsic brightness you know and by looking at its apparent brightness—because the intensity of light fades with the square of the distance—you can easily calculate the distance.

Hubble saw how faint the star looked on the photo, and then he saw what its real brightness was. So he knew how far away Andromeda was. It is external to our galaxy. It is 2 million light-years away. So now it's not just the Milky Way, but each one of his smudges is a Milky Way, a hundred billion stars, and there's hundreds of billions of these galaxies. So overnight in 1923, he changed the scale of the universe, from being finite to something essentially infinite.

Now by the end of the 1920s he did something else, which is to discover that the universe is not static. He looked at these galaxies again, and he noticed that they had a speed of motion relative to us. The farther away the galaxy is, the faster it's flying away from us. He found the evidence for the expanding universe. This is a notion which is embedded in Einstein's theory of relativity, that there was a beginning to space and time, some 15 billion years ago.

Hubble overturned everything. I call it the last step of the Copernican revolution: The universe is not finite and static. It's infinite and expanding, and what's worse, it had a beginning, which means it's not eternal. And that all happened at the chair here. The little wooden rickety chair. ◆

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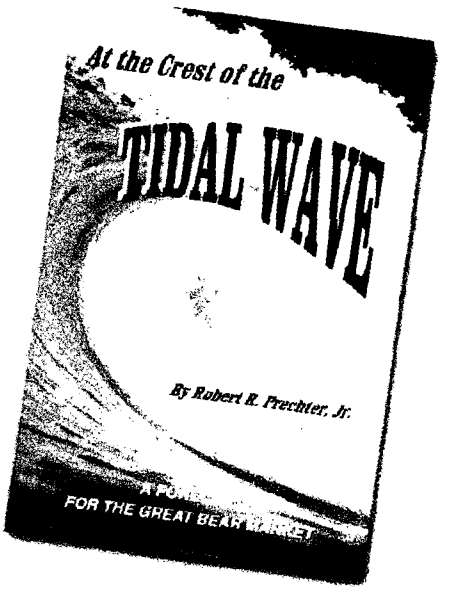

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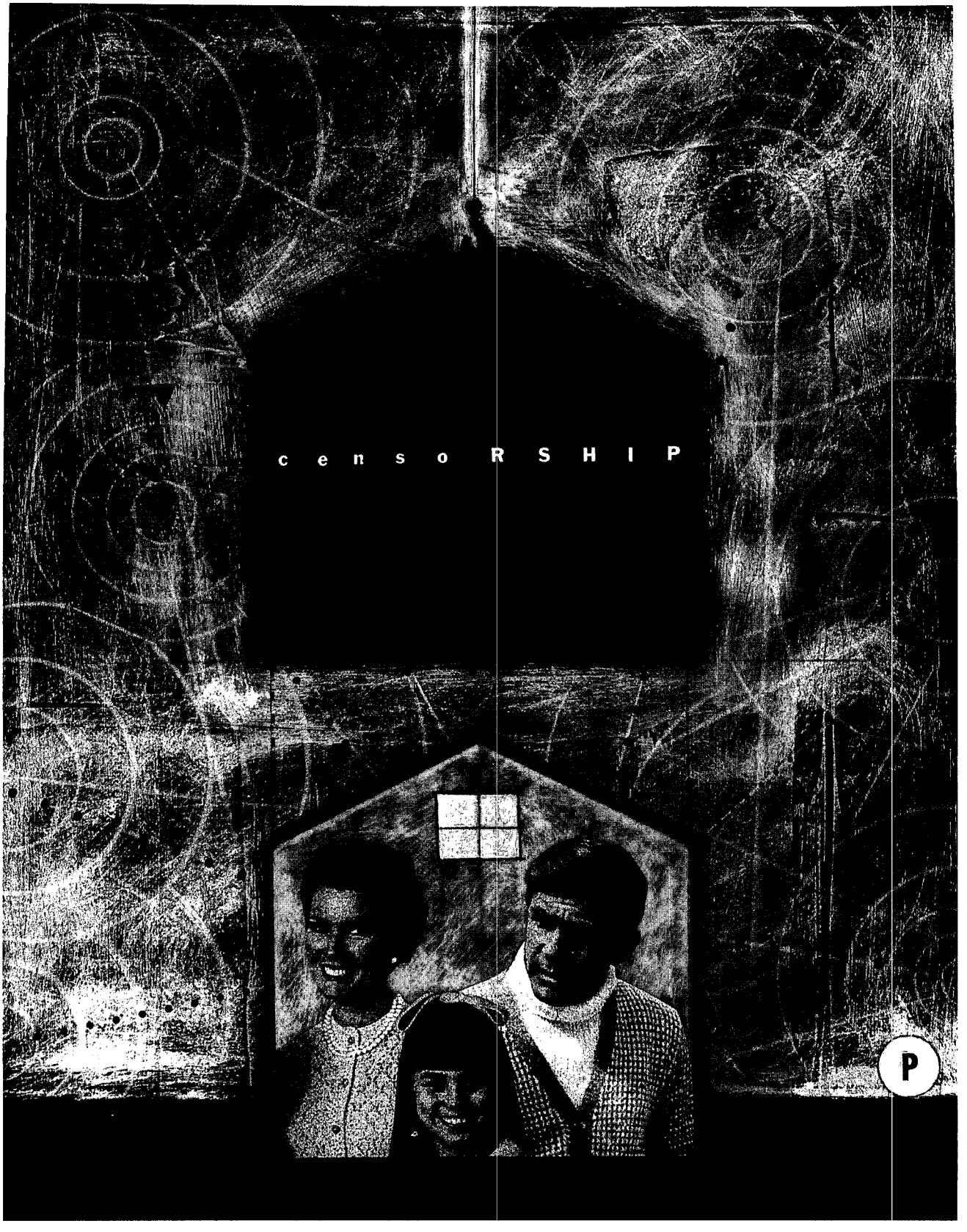

PETER BENNETT

Pervasive Problem

The 1978 Supreme Court decision allowing censorship of dirty words on radio threatens free speech in cyberspace.

On a Tuesday afternoon in October 1973, a motorist in the New York area tuned his radio to WBAI-FM and heard a 12-minute monologue by comedian George Carlin entitled "Filthy Words." The routine, included on Carlin's record *Occupation: Foole*, had been taped during a live performance in California. The topic was the "words you couldn't say on the public airwaves, the ones you definitely wouldn't say, ever." Carlin began by listing the seven words designated by the FCC as unacceptable for broadcast media: "shit, piss, fuck, cunt, cocksucker, motherfucker, and tits. These are the ones that will curve your spine, grow hair on your hands, and maybe even bring us, God help us, peace without honor, and a bourbon." The driver who happened upon Carlin's monologue, later described in court records as accompanied by his "young son," wrote a letter of complaint to the Federal Communications Commission. His was the only complaint received about the Carlin broadcast. Although the court records did not say so, the driver was a board member of Morality in Media who was visiting the New York area from his home in Florida, and his "young son" was 15 years old.

The FCC responded by placing a letter of sanction in its file for the

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By Jonathan D. Wallace

Pacifica Foundation, which operated WBAI. Pacifica challenged the action on First Amendment grounds, and the case wended its way up to the Supreme Court, which issued a fragmentary and confusing decision in July 1978. Supporting the FCC's authority to regulate "indecent" speech on the airwaves, the Court emphasized that radio broadcasts "pervade" people's homes and may be heard by unattended children. It thereby introduced a new and controversial doctrine into American constitutional law: Government may regulate a communications medium because of its "pervasiveness."

Most commentators originally thought *Pacifica Foundation v. FCC*, destined to be known as "the seven dirty words case," applied only to broadcast media. But in his 1983 book *Technologies of Freedom*, communications scholar Ithiel de Sola Pool argued that the pervasiveness doctrine could be used to justify "quite radical censorship." He was right. In recent years, *Pacifica* has been cited by the Supreme Court in a case upholding restrictions on cable TV, and it was the foundation for the Communications Decency Act, which attempted to regulate speech on the Internet.

When the Supreme Court overturned the CDA in the 1997 case *ACLU v. Reno*, it did not reject the pervasiveness doctrine. Instead, it held that the Internet is not pervasive. But this finding was based on such narrow grounds that it is bound to be undermined by technological developments. Furthermore, if the logic of the pervasiveness doctrine were applied consistently, even the print media would not be safe from censorship. As long as *Pacifica* remains the law, defenders of free speech, online or off, cannot rest easy.

Broader definitions of "indecency" have allowed the FCC to investigate more complaints dealing with sexual insinuations, including a Howard Stern program featuring a man playing the piano with his penis (on the radio, remember).

To understand what happens when the government tries to protect us against "indecency" in "pervasive" media, it is important to recognize how broad that category of speech is. Although many people use the words *pornography*, *obscenity*, and *indecency* interchangeably, the law understands them very differently. *Pornography* is a popular term with no legal meaning. *Obscenity*, as defined by the Supreme Court in the 1973 case *Miller v. California*, is patently offensive, prurient material, lacking significant scientific, literary, artistic, or political ("SLAP") value. The *Miller* standard has been used almost exclusively against distributors of hardcore visual material—pictorial magazines and videos—that lack perceived SLAP value. *Indecency*, by contrast, is "patently offensive" material that may have significant SLAP value, and it need not include pictures. Historically, indecency laws in the United States were used to prosecute writers and publishers of controversial novels (including the works of Balzac, Tolstoy, Zola, and Joyce), along with early crusaders for women's sexual independence, abortion rights, and birth control.

The main justification for indecency laws has always been protecting children. The Supreme Court has repeatedly held that unlike obscenity, which is considered outside the scope of First Amendment protection, indecent material cannot be banned. It can only be "channeled"—regulated so that it is kept away from children. In *Butler v. Michigan*, a 1957 decision overturning a state ban on indecent literature, the Court said adults cannot be reduced to reading "only what is fit for children." Writing for the majority, Justice Felix Frankfurter said to ban indecency for the sake of children is "to burn the house to roast the pig."

The question in *Pacifica* was whether the restrictions on broadcast indecency, like the ban at issue in *Butler*, impermissibly infringed on the freedom of adults. The Supreme Court was reassured by the fact that the FCC's regulations, unlike the Michigan law, did not carry criminal sanctions. The consequence of Pacifica's infraction was not a prison term or even a fine—just a letter of reprimand (which could, in theory, affect the FCC's willingness to renew the station's license). The Court's concerns were also allayed by the narrowness of the FCC's "seven dirty words" rule. The majority argued that speakers could always find another vocabulary to express the same ideas.

The broadcast industry took this statement as an invitation. The 1980s and '90s saw the proliferation of "shock jocks": loud, crude (and highly popular) radio hosts—typified by Howard Stern—who frequently found ways to talk about sex without using the seven dirty words. In response, the FCC broadened its definition of indecency to include suggestive language that didn't use any of the original seven dirty words. Beginning in 1986, indecency was defined as "patently offensive" language describing sexual or excretory acts or organs. In 1988 Congress tried to ban broadcast indecency entirely, but the Supreme Court, consistent with its ruling in *Butler*, said that approach went too far. Instead, the FCC continued to "channel" broadcast indecency by restricting it to the late evening and early morning (10 p.m. to 6 a.m.), when children were less likely to be listening or watching.

With the broader definition of indecency in place, listener complaints investigated by the FCC increasingly dealt with sexual insinuations. Infinity Broadcasting, the syndicator backing Howard Stern, was fined millions of dollars for some of his excesses, including a show featuring a man who played the piano with his penis (on the radio, remember) and Stern's comment that "the closest I ever came to making love to a black woman was masturbating to a picture of Aunt Jemima."

But speech need not be frivolous to be considered indecent.

Flipping channels as a teenager, I came across a PBS documentary about breast cancer that ended with a brief sequence of a woman examining her breast. Nothing in the FCC's indecency regulations excludes the possibility that a television station could be sanctioned, or have its license renewal application denied, for broadcasting such a documentary. Broadcasters have to rely on the good sense and forbearance of FCC bureaucrats to protect socially valuable speech.

That is bound to have a chilling effect on programming, because broadcasters have to anticipate what the FCC will consider indecent, and even material with a serious point can run afoul of the rules. In 1989, for example, the FCC fined a Miami radio station for playing the Uncle Bonsai song "Penis Envy," a satire of macho attitudes. It has also found excerpts from the critically acclaimed play *Jerker*, in which two gay men discuss their sexual fantasies over the telephone, to be indecent. Social conservatives have even suggested FCC action against TV news coverage showing Madonna's "Justify My Love" video and sexually explicit photographs by Robert Mapplethorpe —both of which were aired precisely because they had been subjects of controversy.

Social conservatives have even suggested FCC action against TV news coverage showing Madonna videos and Robert Mapplethorpe photographs, which were aired precisely because they had been subjects of controversy.

Even the old definition of indecency went beyond gratuitous profanity. Carlin, after all, was making a political statement by mocking the very system of regulation that made it illegal to air his monologue. Justice William Brennan dissented from the *Pacifica* decision because its rationale "could justify the banning from radio of a myriad of literary works, novels, poems and plays by the likes of Shakespeare, Joyce, Hemingway." He noted that *Pacifica* would allow the suppression of political speech "such as the Nixon tapes" and could even result in sanctions for broadcasting portions of the Bible. In particular, he cited I Samuel 25:22, where King David threatens Nabal, a wealthy man who has treated his messengers rudely: "So and more also do God unto the enemies of David, if I leave of all that pertain to him by the morning light any that pisseth against the wall."

If the concept of indecency is disturbingly elastic, so is the idea of pervasiveness. The puzzling thing about the Supreme Court's invention of the pervasiveness doctrine in *Pacifica* is that it was not necessary to resolve the case. For half a century, the government's power to regulate broadcasting had been based on the idea of "spectrum scarcity": Since there are a limited number of frequencies available for broadcasting on "the public airwaves," the government must decide who gets to use them, and it may attach conditions to that privilege. Critics of this doctrine have long argued that it does not justify a lower level of First Amendment protection for broadcasting, since all media, including books and newspapers, use scarce resources. Yet the Court has repeatedly relied on the spectrum scarcity argument, and it could have done so again in *Pacifica*.

Instead, the Court declared that "the broadcast media have established a uniquely pervasive presence in the lives of all Americans. Patently offensive, indecent material presented over the airwaves confronts the citizen, not only in public, but also in the privacy of the home, where the individual's right to be left alone plainly outweighs the First Amendment rights of an intruder." For nearly two decades, no one really knew what to make of the pervasiveness doctrine. Was "pervasiveness" a feature only of a "scarce" medium, such as radio or television? Or could other media, such as cable TV and online services, be regulated as pervasive?

Two centuries of case law had finally established that any idea may be explored in print, no matter what language is used. Under those precedents, no law could ban the use of the seven dirty words in this article or in any publication, scholarly or frivolous. It might seem to be a matter of common sense that every medium would be granted the same protection. Why should technical distinctions be the basis for different treatment under the First Amendment? What would be the rationale, say, for regulating printed books more strictly than books on parchment or papyrus?

As it happens, the Catholic Church and the governments of many European countries were terrified by the introduction of the printing press. In France during the 1530s, King François I banned printed books and ordered the burning of printers, along with the works they had published. In 1559 Pope Paul IV established the *Index of Prohibited Books*. The grave danger presented to established authority by the printing press was that controversial speech could be disseminated more rapidly to a wider audience. In other words, print made such speech pervasive.

In the United States, courts and legislators have willfully failed to see the analogy between each new communications medium and print, the ancestor of them all. Sometimes discriminatory treatment of a new medium was based on a tautology, a finding that "it is different, therefore it is different." For more than 30 years, movies were denied First Amendment protection because the Supreme Court, in a 1915 case, refused to see any similarity between cinema and "the press." First radio, then television was held to be subject to a higher degree of censorship than books and periodicals because of "spectrum scarcity."

That argument does not apply to cable television: There is no firm upper limit on the number of channels that can be delivered to your house, as long as the company lays a powerful enough cable. But is cable TV, available in more than 60 percent of American homes, nonetheless "pervasive"? In the 1994 case

Turner Broadcasting v. FCC, which dealt with the issue of whether cable companies could be required to carry broadcast stations, the Supreme Court said cable is not like broadcasting because it "does not suffer from the inherent limitation that characterizes the broadcast medium." This comment appeared to be a sign that the Court intended to keep cable free from the oppressive regulatory scheme applied to broadcast television.

But that did not happen. In the 1996 case *Denver Area Telecommunications Consortium v. FCC*, the Court ruled that cable television, though not "scarce," is "pervasive." The case involved a federal law requiring cable providers either to ban indecent programming or to block it, delivering it only to viewers who request it. Justice Stephen Breyer, writing for the plurality, approvingly summarized *Pacifica*'s finding that "the broadcast media have established a uniquely pervasive presence in the lives of all Americans" and that "patently offensive, indecent material...confronts the citizen, not only in public, but also in the privacy of the home." Such exposure, he said, was "generally without sufficient prior warning to allow the recipient to avert his or her eyes or ears." Several other justices relied on *Pacifica* in their concurring opinions. Only Justice Clarence Thomas took a clear stand against differentiating cable from print media. "The text of the First Amendment," he noted, "makes no distinction between print, broadcast, and cable media."

Commentators had long wondered why cable TV should be treated differently than broadcast TV, when the experience of watching them is essentially the same. Why should it matter, for First Amendment purposes, if the image is delivered to the house via the airwaves or over a cable? *Denver* seemed to give the Court's answer: It doesn't.

One of the 1996 Communications Decency Act's main sponsors has said, "The Internet is like taking a porn shop and putting it in the bedroom of your children and then saying, 'Do not look.'" But porn was hardly the only kind of speech covered by the CDA's definition of "indecency."

But this meant we were now facing the possibility of the "quite radical censorship" de Sola Pool had predicted. The next logical question was why it should matter if the same images or words are delivered to the house via the Internet. Congress did not think it should. With the Communications Decency Act of 1996, it applied the FCC's indecency standard to the Internet, establishing a penalty of up to two years in prison and a $100,000 fine for each violation. The law's proponents relied heavily on *Pacifica* and the pervasiveness argument to justify the legislation. Sen. Dan Coats (R-Ind.), one of the CDA's main sponsors, said during congressional debate in June 1995, "The Internet is like taking a porn shop and putting it in the bedroom of your children and then saying, 'Do not look.'"

But pornography was not the only kind of speech that could be covered by the law's broad definition of indecency: "patently offensive" language describing sexual or excretory acts or organs. Consider a passage from Robert Jay Lifton's book *The Nazi Doctors*, a history of human medical experimentation in Auschwitz: "Experimental subjects—relatively healthy young men and women in their late teens or early twenties, who had been obtained by a previous day's order from the camps—were lined up in a waiting room.... Women were put between plates that pressed against abdomen and back; men placed penis and scrotum on a special plate....Not long after the x rays, the women's ovaries were removed surgically, often in two separate operations."

In June 1995, I placed this excerpt on the Internet as part of a compilation called *An Auschwitz Alphabet* (www.spectacle.org/695/ausch.html). In the three years since, I have received hundreds of e-mail messages from strangers around the world, including many teachers and schoolchildren, thanking me and describing their own responses to the *Alphabet*. The same year I published the *Alphabet*, Congress passed the CDA, which arguably made the Lifton passage illegal on the Internet. Because of my work on *An Auschwitz Alphabet*, I became one of 20 plaintiffs represented by the ACLU in *ACLU v. Reno*, the case that tested the CDA. Other plaintiffs included Critical Path AIDS Project (www.critpath.org), which provides information about safer sex, and Biblio Bytes (www.bb.com), which sells electronic books, including romance, erotica, and horror, over the Web.

A special three-judge federal panel in Philadelphia conducted a trial on the law's constitutionality in the winter and spring of 1996. One of the plaintiffs' witnesses was Scott Bradner, a senior technical consultant at Harvard University and a member of the Internet Engineering Task Force, who educated the judges about the nature and architecture of the Internet. During cross-examination on the first day of the trial, Justice Department attorney Jason Baron noted that Bradner had said in a deposition that the Internet was "becoming pervasive." Bradner explained that "by 'pervasive' I mean omnipresent. It is available anyplace."

Throughout the trial, the Justice Department sought to prove that children could unwittingly stumble on indecent Internet content. Baron read an excerpt from a deposition by Donna Hoffman of Vanderbilt University, the leading expert on commercial use of the Internet: "Individuals must seek out the information they wish. Information doesn't suddenly appear, surprising them." Baron then described a hypothetical situation: Your child has been assigned to write a report on the book *Little Women* and wants to surf the Web for information. Refusing to take the bait, Hoffman said that a child who was competent in using the Web would use "Alcott" and "Little Women" as keywords for the search, rather than the book title alone. Baron

handed her a government exhibit—the results of an *Infoseek* search on "Little Women"—and asked her to read the fifth item: "See hot pictures of naked women."

I later e-mailed Hoffman and asked her to comment on *Pacifica*'s applicability to the Internet. She responded, "In contrast [to broadcast media], users of the Internet are active participants in the media consumption process. It would be extremely unlikely for a child —or any user not paying attention—to 'stumble' upon indecent speech simply by clicking the mouse. Users must read streams of content and make informed choices about the links they want to follow. I am aware of no 'trick' links on the Internet—that is, links that [claim] to offer one type of content but in fact deliver quite another, indecent type."

The three Philadelphia judges were unanimous in deciding that the CDA was unconstitutional and that the Internet was entitled to extensive First Amendment protection. Each wrote a separate concurring opinion. In his, Judge Stewart Dalzell addressed the question of whether *Pacifica* applied to the Internet. The Supreme Court had not issued its *Denver* decision labeling cable TV "pervasive," which came only days later. Dalzell read the ambiguous pro-cable language in *Turner* to mean that the Court, in the absence of "scarcity," would not find a medium to be pervasive. He concluded that "time has not been kind to the *Pacifica* decision. Later cases have eroded its reach, and the Supreme Court has repeatedly instructed against overreading the rationale of its holding."

But in a footnote, Dalzell wisely offered a second, independent argument against applying *Pacifica* to the Internet: "Operation of a computer is not as simple as turning on a television, and the...assaultive nature of television...is quite absent in Internet use....The Government may well be right that sexually explicit content is just a few clicks of a mouse away from the user, but there is an immense legal significance to those few clicks."

A year later, the Supreme Court agreed that the CDA was unconstitutional—and that the Internet is not pervasive. Quoting the Philadelphia opinions, the Court noted that "the receipt of information on the Internet requires a series of affirmative steps more deliberate and directed than merely turning a dial." The Court added that "the Internet is not as 'invasive' as radio or television."

It was the right result, but it was based on unstable ground. In future trials, the supporters of censorship will do everything they can to show that indecent Internet content can spring out at unsuspecting children. (Consider www.whitehouse.com.) And as the boundaries between the Internet and television continue to erode, with more and more people getting wired and increasingly high-quality video programming available online, the analogy between the media will become harder to resist. The Court has not overruled its ill-considered holding in *Pacifica*. It has simply found a flimsy technical excuse for not applying it to the Internet.

If the pervasiveness of a medium is an excuse for censorship, and all media are pervasive, all media can be censored. A child flipping through the Bible—the most pervasive book imaginable—is likely to stumble across passages about excrement, urination, rape, or incest.

Nor does the potential reach of the pervasiveness doctrine end with the Internet. Author Wendy McElroy, former president of Feminists for Free Expression, comments: "Taken to its logical conclusion, the pervasiveness argument would prohibit anyone standing on a public street from discussing...controversial matters. The open air might well transmit the discussion through the open windows of nearby houses, businesses, and apartments. One might reply, 'Let them close the window.'"

In *Pacifica*, the Court failed to explain why books and magazines are not pervasive. Previous generations of American children saw their first nude image not on the Internet or cable TV but in the pages of a *Playboy* found in Dad's closet. As Justice Brennan pointed out, a child flipping through the pages of the Bible is apt to stumble across a passage pertaining to excrement, urination, rape, or incest. The danger of the pervasiveness doctrine is a matter of simple logic: If the pervasiveness of a medium is an excuse for censorship, and all media are pervasive, all media can be censored.

"Taken literally," says Washington, D.C., attorney and First Amendment specialist Robert Corn-Revere, "the pervasiveness doctrine empowers government to exert greater control over a medium of communication to the extent it is universally available and influential. By this logic, the printing press should be subject to intensive regulation, since few media are as pervasive as print. Such reasoning is antithetical to the First Amendment."

The operative metaphor for freedom of speech in the United States was formulated eight decades ago by Oliver Wendell Holmes. Dissenting from the Supreme Court's decision in *Abrams v. United States*, he wrote: "The ultimate good desired is better reached by free trade in ideas....The best test of truth is the power of thought to get itself accepted in the competition of the market." In the marketplace of ideas, every medium strives to be pervasive, and so does every idea communicated in those media. The First Amendment rule book says speakers should compete to make their messages as pervasive as possible. *Pacifica* penalizes the winners.

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Numbers Game

North Carolina educrats may shut down the successful Healthy Start charter school because it enrolls "too many" blacks.

By Deroy Murdock

Too many blacks. That's the rap against North Carolina's Healthy Start Academy, the first of 34 charter schools launched last year in the Tar Heel State. In just one year, the school on Durham's Liberty Street has wowed the parents of its 170 kindergarten-through-second-grade students with soaring test scores and 98 percent attendance.

The educational establishment is not amused. One hundred sixty-eight of Healthy Start's kids are black. Only two are white. Healthy Start's 98.8 percent black student body violates a Democrat-sponsored clause in the charter school law requiring that each school "reasonably reflect the racial and ethnic composition" of the district it serves. By this racial calculus, Healthy Start should be 55 percent white, rather than 1.2 percent. Although the school is in a nearly all-black neighborhood, and its staff has not discriminated against anyone, state officials could use this law to shut down Healthy Start and 13 other "insufficiently diverse" charter schools. The student bodies of 12 of these schools are more than 85 percent black, while only the Megellan Charter School in Raleigh is considered "too white," given its 90 percent Caucasian student body.

"We have encouraged the State Board of Education to enforce the law," says John Wilson, executive director of the North Carolina Association of Educators, the state's chief teachers union. "I think kids need to learn to share the experiences and cultures of all children in their communities," he adds, "and I think if a school ends up segregated, yes, it should be closed down."

While Healthy Start may not "celebrate diversity," it clearly values academic achievement. At a June 17 meeting for pupils and parents, Headmaster Thomas Williams unveiled his students' scores on the standardized Iowa Basic Test of Educational Skills. Last fall, Healthy Start's second graders scored at the 34th percentile on the exam. By May, they had climbed to the 75th percentile. First graders rose from the 21st to the 32nd percentile. Healthy Start's kindergarteners, meanwhile, rocketed from the 42nd percentile last October to the 99th percentile among 5 million students tested nationwide.

"When I announced these scores at an assembly, moms were crying," Williams recalls by phone. "Grandmas and grandpas were crying and yelling. Theirs were kids who never heard anything good from schools."

Lynette Cradle, a black parent, attended the event but didn't find Williams's announcement quite so startling. "I really wasn't surprised because of the volume of homework that came home with them every day," says the self-described stay-at-home mom. Her second grader, Jasmine, became the school's spelling bee champion at age 7. Five-year-old John Jr. just graduated kindergarten.

He is "reading things that I didn't think he would be able to read yet," Cradle says. "He's very in tune with what's going on. He talks about the ozone layer and Monica Lewinsky. They go from current events to colors and the months of the year. It's like a well-rounded education."

Thomas Williams—a blunt, straight-talking man—says Healthy Start belies left-liberal educational theories that attempt to explain why poor, minority children supposedly cannot learn in public schools. "We fly in the face of all the bureaucratic excuses," the headmaster says. "Seventy percent of our kids are on welfare. Of the 170 kids, 168 of them are black. A hundred and twenty don't have daddies. They are brought up by their mothers alone. They came to us far below grade level. So they have all the excuses for failure, don't they? In public school, they'd be put in a corner. 'He's black. He's poor, so he has to fail.'

"Here we have proved that the excuses don't work," Williams continues. "The kids succeed. We have a strict discipline code. The kids wear uniforms. If they don't have daddies, we say to them: 'OK: 2 + 2 = 4. Do you understand that?' We hold up a lantern of expectations. We say: 'It's this high. Reach it.' And they do."

Healthy Start's students are making Olympic-class educational strides despite Spartan conditions. "We're in a church basement," Williams explains. Recess takes places in the parking lot of the United Church of Christ. Aside from this exercise period, "these kids don't get any natural light," Williams says. "We have 10 rooms divided by paper-thin walls. No public school would operate in this joint."

"Seventy percent of our kids are on welfare," says Healthy Start Headmaster Thomas Williams. "Of the 170 kids [enrolled], 168 of them are black. A hundred and twenty don't have daddies. They are brought up by their mothers alone. They came to us far below grade level. So they have all the excuses for failure, don't they?"

Indeed, Healthy Start's results compared to its budget capsize the argument that all a school needs in order to create bright students is yet another sandbox full of cash. Though they receive state funds, the independence, flexibility, and accountability that charters enjoy let them do more with less.

According to the John Locke Founda-

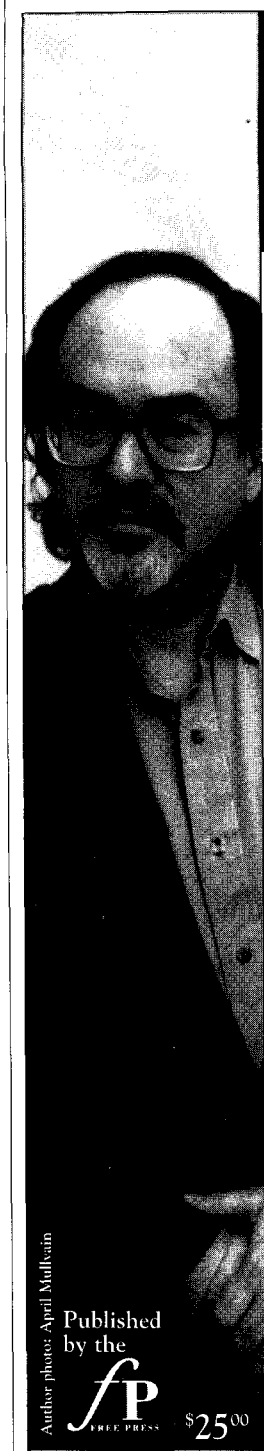
tion, a free market think tank based in Raleigh, the Durham public schools spend an average of $8,000 per student annually. Healthy Start budgets $5,200 per pupil while providing an additional 24 days of classes each year. In news that should make the teachers unions nervous, Healthy Start's instructors are the best paid in Durham, starting at $30,000 for certified personnel, versus $22,000 for their public school counterparts. What Healthy Start lacks in counselors and psychologists, it pays in higher salaries for its nine certified teachers, four teacher's assistants, and four additional teachers who man the school's Opportunity Room and Skills Center. Both slower and faster children are given extra attention in these facilities.

Money aside, Healthy Start's teachers discuss the school with pride. "The thing I find most encouraging about this school is the leadership as well as the population that we are serving," says Helen Eagleson, 36. She is a first-grade teacher who previously taught in the Durham public schools. "A lot of the kids at Forest View [her last public school assignment] were from a higher income bracket. Parents could afford to put their kids into tutoring programs. I am working with kids now many of whom were given up on. Here I think we're making a real impact."

Eagleson specifically recalls one very quiet student. "She would never talk. Other kids told me, 'She's shy. She's really quiet.' By the end of the school year, she was talking, carrying on conversations and introducing visitors to other people. Because you have people who care about these children, they feel that and respond. In the public schools, they're put in the corner or left out in the hallway. Here, every child is given individual time and made to feel important....Social and emotional growth is what I see here in the students as well as academic growth."

"When I got here, the students didn't know the alphabet and barely could write their names," says Jerry Broadhurst, 31, Healthy Start's lead teacher and instructor of a first-grade class. "To see their growth shows the importance of having the teachers and the parents working together. That has been consistent."

Because parents choose to send their children to Healthy Start, a higher-than-



FROM THE AUTHOR OF RADICAL SON

THE POLITICS OF BAD FAITH

THE RADICAL ASSAULT ON AMERICA'S FUTURE

BY DAVID HOROWITZ

"In the aftermath of the Nazi Holocaust, no intellectual would have ignored the link between the racist idea and the 'final solution.' But no progressive intellectual today will recognize the parallel nexus between the socialist idea and the gulags it produced."

From chapter 2: "The Left After Communism"

"By rejecting America's normative institutions, while radically inventing the social future, queer activists have invited the very retributions that have historically attended the systematic violation of natural order. In the process, they have created their own social Frankenstein (even without achieving state power) in the contemporary epidemic of AIDS."

From chapter 5: "A Radical Holocaust"

"A passionate and insightful book."

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usual degree of parental involvement can be expected. Parents voted to exclude sex education from classrooms. In addition to the E.D. Hirsch Core Knowledge curriculum, students study the three *R*s as well as respect and responsibility through *The Children's Book of Virtues* and parent-approved Disney movies.

Other teachers express outrage and bewilderment at the fledgling campus's potential plight. "To say that they could close our doors down because we're not racially balanced is ridiculous," says Letisha Judd, a 26-year-old second-grade teacher. "As long as the school is performing and providing students with the education that they need, I don't know why we have to be racially balanced." She adds a simple fact: "We're open to the public. We cannot force people to bring their children here."

Indeed, Healthy Start has advertised in white neighborhood newspapers, posted flyers in white churches, and mailed literature to white homes. If white parents won't enroll their kids in a school in a tough, black neighborhood, Healthy Start can't force them.

Healthy Start's appeals have not gone totally unanswered, however. Christine Jonsdotter, 41, is the mother of Michael, one of Healthy Start's two white students. Although she and her husband live 15 minutes away in an affluent Raleigh community, they chose not to send their first grader to the local public elementary campus. "I didn't feel comfortable putting him in a large public school system," Jonsdotter tells me. "I wanted a smaller-school setting with more emphasis on character development, not just academics." She adds that at Healthy Start, "They teach manners. They teach kids to be kind to each other."

Jonsdotter says that in just four months at Healthy Start, Michael has overcome many of his reading difficulties. She is "totally appalled" that the school's racial makeup could place it in jeopardy. "There's been nothing but an outpouring of love from that school," she says. "When my kid walked in there, the kids ran up and hugged him."

Hugs, shmugs, say North Carolina's educrats. This sort of progress pales in comparison to the overwhelming blackness of some charter schools. "This wasn't supposed to happen," State Board of Education member Jane Norwood declared at a spring board meeting. "This is not the intent of having charter schools," she continued, waving overhead a sheet full of numbers on the racial makeup of charters. As Julius Chambers, a civil rights attorney and chancellor of North Carolina Central University, told the Greensboro *News & Record*: "I don't think we should be creating havens for black students or for white students."

E.S. Simpson, a former superintendent of the Johnson County Schools, wrote the Raleigh *News and Observer* in a near-panic: "Are charters being used to re-segregate the races? To segregate the poor from the rich? To establish a class system?"

Teachers union leader John Wilson sees all this as a matter of creeping Jim Crowism. Never mind that parents are free to send or not send their children to places like Healthy Start. "I think resegregation is wrong anywhere," he says. "If there are children of other ethnicities, then the school board should cause the makeup of schools to be reflective of that." And just what is Wilson's recipe for reflectivity? Busing, "both mandatory and voluntary." He helpfully adds: "*Busing* is not a bad word. It's a mechanism for creating a society of children that learn to work together."

Wilson says he and the North Carolina Association of Educators "will wait to see what good faith effort" the charters are making "to achieve racial parity....If we see they are not, we will check with our legal counsel to see if there is any action we can take on behalf of the taxpayers of North Carolina."

A state shutdown of Healthy Start and other "excessively black" charters "will happen over my cold, dead political body," says Kay Daly, a spokeswoman for the North Carolina Foundation for Individual Rights. Daly calls Healthy Start "the first lifeboat that came along. Now they are threatening to torpedo the lifeboat and send the kids back to the killing fields that are the Durham Public Schools."

The NCFIR plans to ask a federal judge to prevent North Carolina officials from closing charter schools under the state racial diversity mandate. Foundation attorney Jack Daly notes that "undiverse" public schools do not get padlocked; the racial rules apply only to charter schools. More important, NCFIR plans to argue that students should be treated equally as Americans under the Constitution's 14th Amendment rather than as components of racial categories.

Oddly enough, all this tumult revolves around a universe of just 4,600 students at 34 schools, reports the *Spectator*, a free weekly newspaper distributed in the Raleigh-Durham area. Thirty-one new charter schools could add an additional 7,500 students. Compare those 12,100 current and potential pupils to North Carolina's total enrollment of 1.7 million. The magnitude of the charter schools' threat to the status quo is remarkable given their modest size.

Blacks are fleeing the educational plantations for emancipated charter schools. Their success stories are highlighting the public schools' failure to educate their captive student bodies. It would be an especially bitter irony if the masters of the old system used the race card to keep black children shackled in ignorance.

Critics predicted that establishing charters would encourage white flight from traditional public schools. That never occurred. Instead, blacks are fleeing the educational plantations for emancipated charter schools. Their success stories are highlighting the public schools' failure to educate their captive student bodies. It would be an especially bitter irony if the masters of the old system used the race card to keep black children shackled in ignorance. ◆

Deroy Murdock is a New York–based MSNBC columnist and a senior fellow with the Atlas Economic Research Foundation in Fairfax, Virginia.

Neither Nationalist nor Socialist

How the Swiss kept their freedom in World War II

By Walter Olson

An "island of liberty and harmony in a sea of dictatorship and discord" and "a citadel of peace through stormy centuries," to quote a 1938 *New York Times* analysis; "it is a land of hard work and frugal habits, of justice and cleanness and tolerance, of the very essence of live-and-let-live"—and, not incidentally, the bulwark of free market capitalism in Europe. To say that Switzerland enjoyed a favorable reputation in America until recently would be to understate matters. Today, after a relentless and astonishingly one-sided media campaign, there is scarcely a horror tale about the Swiss too extreme or absurd to be picked up in the press.

The assault began with widely circulated allegations—the truth is less clear-cut than news reports have made it sound—that Swiss banks swallowed great sums deposited in private accounts by victims of the Holocaust. (At press time, Swiss banks had reached a tentative agreement to settle those allegations, and avert threatened sanctions, by paying more than $1 billion.) Picking up its own momentum, the indictment soon expanded into a depiction of the Swiss as a nation of heartless profiteers, "Hitler's silent partners," working to advance the Nazi cause without being shot at. In June the Los Angeles–based Simon Wiesenthal Center made worldwide headlines by issuing a report claiming that pro-Nazi activity "thoroughly saturated the core of Swiss society." Teenagers now grow up hearing that the Swiss spent World War II rooting for the Axis powers.

Now Stephen Halbrook, an attorney and well-known Second Amendment expert (he's the author of 1984's *That Every Man Be Armed*), has taken a much-needed look at the Swiss wartime record in a new book titled *Target Switzerland: Swiss Armed Neutrality in World War II*. The book not only provides a starting point for all future discussions of Switzerland's military role in the war but also makes an interesting contribution to the literature on both federalism and gun rights. According to Halbrook, Switzerland's traditions of extreme decentralization and of an armed populace played a key role in preserving its freedom in an hour of peril.

As Halbrook reminds us, the American Founders often cited Switzerland as an example of the kind of nation they hoped to build on these shores. They admired its survival for centuries as a democracy amid tyrannies of every kind, following its birth in 1291 as the result of a peasant revolt in the remote fastnesses of the Alps. In 1774, during an unsuccessful attempt to urge Quebec to join the colonists' cause, the Continental Congress pointed to the Swiss federalist model, in which an unassuming central government let diverse cantons go their own way, with religious differences set aside: "Their union is composed of Roman Catholic and Protestant States, living in the utmost concord and peace with one another and thereby enabled, ever since they bravely vindicated their freedom, to defy and defeat every tyrant that has invaded them." Said Patrick Henry: "Let us follow their example, and be happy."

Switzerland virtually invented the policy of "armed neutrality": It started no wars and sought no empire, but defended itself with ferocity when attacked. This policy committed it to staying out of other nations' quarrels and trading with all belligerents to the extent permitted by circumstance. The rise of modern nationalism, with its presumption that national boundaries should reflect commonalities of language and lineage, posed a direct challenge to the reasons for Switzerland's existence. Only historical accident, it seemed to nationalist thinkers, separated Swiss Germans (the majority) from the mass of Germans. By the same logic Swiss French clearly belonged with their fellow French-speakers and Swiss Italians with Italy. By the late 1930s, Nazi cartographers were provocatively including German-speaking Swiss cantons in their maps of *Grossdeutschland*. The Swiss Federal Council replied as follows: "We reject the concept of race or common descent as the basis of a state and as the factor determining political frontiers." The Swiss "national idea," said the council, rests instead on a "spiritual decision" to commit to certain values, of which the most important, it added pointedly, were federalism, democracy, and "respect for the dignity of the individual."

Anti-Semitism, rife in much of Europe, found Helvetic soil far less friendly. In 1941 *Contemporary Jewish Record*, a publication of the American Jewish Committee, observed, "There is no anti-Jewish movement in Switzerland worthy of such designation." "Anti-Semitism is simply intolerance," declared an official 1943 pamphlet issued by the Swiss Army, terming it a form of "foreign propaganda" that "tears at the roots of our democratic way of thinking." Swiss authorities prosecuted and suppressed numerous Nazi-front organizations, arresting or deporting their leaders, who were often German nationals living in Switzerland. The "bulk of news reporting in [Swiss] broadcasting and the press is anti-German," lamented one high Nazi official. "Germany has no good press in Switzerland."

Dependent on coal from Germany, Switzerland went on trading with the Germans long after Hitler's evil had become apparent—as did the United States until Pearl Harbor. Much to the scandal of today's retroactive moralists, Switzerland also traded extensively in gold with both Axis and Allies. That led to some strange results, since in many cases the two sides were aware that, once the role of the Swiss as middlemen was stripped out, they were in effect trading with each other.

Matters worsened when France fell in 1940 and Switzerland found itself entirely surrounded by the Axis, which exercised veto power on its exports and imports.

Today's revisionists presumably blame the Swiss for not launching a futile attack on the surrounding Axis, or—what is much the same thing—pompously proclaiming sanctions against it. Yet the Allies had ample reason to be glad of Swiss neutrality, which provided many advantages for them—especially given the alternative of simply letting the Axis occupy and plunder the Swiss economy, as it had done with so many small countries'. Switzerland never let the Germans use its roads or rails for military transport, which deprived Hitler of natural logistic routes for his Italian campaign. *Luftwaffe* planes intruding on Swiss air space could expect dogfights, and more than a dozen were downed.

The Nazis developed a full ideological critique of Swiss obstinacy. Nazi theorist Ewald Banse accused the German Swiss of "calculating materialism" and "unlimited self-reliance" and said their aloofness from their fellow ethnic Germans arose from a "belief, doubtless justified in the Middle Ages but long since obsolete, that liberty and equality—those most sacred of human possessions—are at stake." Hitler himself denounced the Swiss repeatedly as "despicable and wretched," "misbegotten," "renegades," "repugnant," and "a pimple on the face of Europe" which "cannot be allowed to continue." (Stalin couldn't stand them either.) The Führer despised their purely defensive military philosophy: "An army whose only goal is to secure peace" is craven, he said. "In addition to all the other characteristics of the Swiss that Hitler disliked," Halbrook adds, "he hated them because of their free market capitalism, which he associated with Judaism." The ever-abusive *Völkischer Beobachter* resorted to the epithet *Berg-Semiten*: mountain Jews.

Again and again, Hitler ordered his generals to draw up plans to invade Switzerland—but never followed through. Why didn't he? One reason was that military crises elsewhere kept intervening. But another was Switzerland's convincing, if purely defensive, military posture. German troops referred to Switzerland as a porcupine (*Stachelschwein*); the Swiss air force consisted of 250 planes, none of them bombers. The most famous element of Swiss defense were the sabotage plans: At the moment of German invasion, the Simplon and St. Gotthard tunnels would be blown up, as well as all bridges over the Rhine, power stations, and air fields. Avalanches and landslides would be set off to block armor and infantry movement.

Another key deterrent factor, Halbrook suggests, was Switzerland's tradition of a popular army—"the people in arms." At one point an astonishing 20 percent of the Swiss population was under arms, a figure unheard of in a modern country officially at peace—or even most countries at war. Every Swiss home had a rifle. Sharpshooting was and is the national sport; each weekend the hills are alive with the sound of gunfire, with fathers delighting in instructing their kids in proper technique. Swiss youths were trained to shoot at 300 meters, Germans at 100. German generals had to consider the example of the Finns, another small nation of skiers and riflemen who had recently held off a Russian invasion far more tenaciously than outsiders expected.

Hitler himself denounced the Swiss repeatedly as "despicable and wretched," "misbegotten," "renegades," "repugnant," and "a pimple on the face of Europe" which "cannot be allowed to continue."

Finally, Swiss defensive preparations drew strength from an unrivaled display of the spirit of resistance. Soldiers were ordered to hold their positions to the last cartridge and then fight on with bayonets. Secret munitions caches were distributed through the countryside, and the populace was trained in how to organize partisan warfare. Unlike any other country in Europe, Halbrook says, Switzerland proclaimed that any reports that the federal council or army high command had agreed to surrender were to be ignored as inventions of enemy propaganda. This remarkable policy tied the leadership's own hands for the sake of maximum deterrent effect, and was thinkable only in a nation where a long tradition of decentralization had distributed the spirit of initiative far and wide. By way of contrast, "Hitler was able to conquer much of Europe by bluffing the central authority of various countries into capitulation," as when the Belgian king surrendered at a point where many of his countrymen would have preferred to fight on. "Switzerland was the only country in Europe that had no political leader with the authority to surrender the people to the Nazis."

Halbrook's is not the only voice being raised to correct recent misreporting. When the Wiesenthal Center's report came out in June, Switzerland's own Jewish community dismissed it as outrageous and ridden with errors. The Basel-based *Jüdische Rundschau* criticized its "exaggerations and falsifications," while the head of the Swiss Confederation of Hebrew Congregations found the report "one-sided and exaggerated." "The Swiss Nazis were weak in numbers," pointed out Zurich's *Israelitisches Wochenblatt*. "In the parliament in Bern they had exactly one seat for four years." Most embarrassingly, Simon Wiesenthal himself, the famed Nazi hunter after whom the center was named, disavowed the report as biased and inaccurate.

The book doesn't take up the controversy over wartime bank deposits, which deserves its own book (and column). And no one would deny that there are serious dark spots on the Swiss wartime record, including the actions of a wartime justice minister who tilted refugee-acceptance policy away from fleeing German Jews, and some defeatist pronouncements by the (fortunately, mostly ceremonial) Swiss federal president.

But the more balanced view remains Winston Churchill's. "I put this down for the record," wrote Churchill to Anthony Eden in a December 1944 memo reprinted in *Triumph and Tragedy*. "Of all the neutrals Switzerland has the greatest right to distinction....What does it matter whether she has been able to give us the commercial advantages we desire or has given too many to the Germans to keep herself alive? She has been a democratic State, standing for freedom in self-defense among her mountains, and in thought, in spite of race, largely on our side." ◆

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Cultivating Culture

By Nick Gillespie

In Praise of Commercial Culture, by Tyler Cowen, Cambridge: Harvard University Press, 278 pages, $27.95

In the second volume of *Democracy in America*, Alexis de Tocqueville—the one Frenchman, living or dead, who somehow seems immune to the contempt Americans hurl at all things Gallic—spun out a number of hypotheses regarding "cultivation of the arts" in aristocracies and democracies. Though proffered more than 150 years ago, Tocqueville's views still frame one side in an ongoing debate about the relationship between the arts and the marketplace. (One might add that in his put-down of America as essentially a throwaway culture, Tocqueville manages to remain quintessentially French even from the grave.)

"In aristocratic ages," proclaimed Tocqueville, "the emphasis is on doing things as well as possible, not as quickly or as cheaply as one can....Where wealth and power are permanently in the hands of a few, it is these people, always the same, who enjoy most of the good things of this world....The heirs to this hereditary superiority naturally like things very well made and lasting....Craftsmen...work for a strictly limited number of customers who are very hard to please. Perfect workmanship gives the best hope of profit." Tocqueville argued that even the *peasant* in such a society has exacting standards, "sooner do[ing] without the things he wants than get[ting] imperfect ones." (What role the peasant's lack of disposable income might play in the decision to "do without" goes unspecified.)

The situation is "very different" in democracies, wrote Tocqueville, "when men are continually rising and falling in the social scale" because of relatively free markets and attendant economic mobility. Formerly wealthy people have good taste but no money to buy good art; newly rich people have money to burn but no taste. Like the regular workman, the artist, according to Tocqueville, responds by lowering his standards to raise his profit margin. "He seeks ways of working, not just better, but quicker and more cheaply, and if he cannot manage that, he economizes on the intrinsic quality of the thing he is making, without making it wholly unfit for its intended use. When only the rich wore watches, they were almost all excellent. Now few are made that are more than mediocre, but we all have one.... Democracy...induces workmen to make shoddy things very quickly and consumers to put up with them. ...Much the same takes place in the case of the fine arts as we have seen happening in the case of the useful arts. Quantity increases; quality goes down." In this way, the marketplace is revealed as the enemy of the museum: It may create lots of stuff, but none of it is very good.

It's interesting to ponder whether Tocqueville would make the same argument today, when people can buy Rolexes for tens of thousands of dollars or pick up equally time-worthy, if arguably less stylish, watches at their local Wal-Marts for under $10; when reproduction techniques have made virtually everyone in the West familiar with the *Mona Lisa* and inspired endless parodic knockoffs (ranging from Duchamp's moustaching of the image to its use in the Rocky and Bullwinkle cartoon series); and when ever-bigger bookstores stock $3.00 paperbacks of Dickens and Hugo next to $30 hardcovers by Jackie Collins and John Grisham. How, one wonders, would Tocqueville respond to an America filled with gas stations that sell gourmet coffee, quality cigars, and classical music CDs?

But of course one hardly needs a dead Frenchman's particular thoughts on the matter. One hears echoes of and variations on Tocqueville's aesthetic guns-and-butter curve all the time: In order to jack up ratings, television necessarily sinks to the lowest common denominator, an aesthetic abyss deeper than the Mariana Trench; the profit-driven search for gargantuan blockbuster movies tramples art-house fare underfoot; publishers, interested only in climbing *The New York Times* best-seller list, are dropping midlist and unknown

Mona Li$a: "Does a market economy encourage or discourage music, literature, and the visual arts?" asks economist Tyler Cowen in *In Praise of Commercial Culture*. He characterizes artists such as da Vinci as entrepreneurs who successfully demanded more and more autonomy from patrons.

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authors like so much dead weight; and on and on.

Tyler Cowen's excellent *In Praise of Commercial Culture* offers a detailed, compelling, and insightful—though necessarily incomplete, for reasons I'll address later—counterargument to such claims. "Does a market economy encourage or discourage music, literature, and the visual arts? Do economic forces of supply and demand help or harm the pursuit of creativity?" asks Cowen, a professor of economics at George Mason University. In documenting his resoundingly pro-market answer to such questions, Cowen works through detailed historical and economic analyses of how market forces greatly enhance the production and consumption of literature, the visual arts, and music. He also engages and rebuts anti-market critics on the left and right.

In Praise of Commercial Culture is a profoundly important book: In a historical moment when even socialists grant the efficiency and efficacy of markets in delivering a dizzying array of goods and services to people (and an increasing number of conservatives lament the same), there is still a great deal of resistance to applying a similar analysis to the production and consumption of culture. Hence, right-wing attempts to cast "classic" art as somehow unsullied by the time and place in which it was created and left-wing embraces of Pierre Bourdieu's unconvincing argument that while market competition may create niche products in the economic sphere, it generates only sameness in the cultural one. Cowen's book is a seminal effort toward understanding that cultural matters, like other forms of human activity, benefit greatly from the decentralization, innovation, and feedback mechanisms endemic to market orders.

In Praise of Commercial Culture is rich in nuance yet highly accessible to the general reader, as the following passage from Cowen's introduction illustrates: "I...use the 'market economy' to refer...generally to a nexus of voluntary exchanges. Beethoven and Michelangelo, who sold their artworks for a profit, were entrepreneurs and capitalists. Rembrandt, who ran a studio and employed other artists, fits the designation as well." While relying on a consistent theory, he never forgets the contingencies of the world he sets out to explain. "I do not argue that capitalism is a monocausal...determinant of artistic success," he writes. "Pure, dumb luck is one of many factors [involved]....Rather than comparing the market for art to a Platonic alternative, I seek to uncover the social mechanisms that encourage and discourage creative artistic achievement and therefore shed light on the production of culture."

Cowen starts with a basic distinction between "cultural pessimists" and "cultural optimists," a classification that transcends traditional right-left political divisions. Pessimists "take a strongly negative view of modernity and of market exchange"; they believe that "the market economy corrupts culture" and that their own time represents a period of decline. Such views have been shared by figures as disparate in time and temper as Plato, Augustine, Swift, Nietzsche, and T. S. Eliot, who penned the cultural pessimist's equivalent of the Apostles' Creed: "We can assert with some confidence that our own period is one of decline; that the standards of culture are lower than they were fifty years ago; and that the evidences of this decline are visible in every department of human activity."

Cultural pessimists are bereft over their loss of power. After all, who can control music when every garage in the country can become a rehearsal hall? Who can control literature when anyone with Web access can distribute his or her work?

While pessimists agree that the culture of their period is going from bad to worse, they reach that conclusion for different reasons. Contemporary pessimists on the right include neoconservatives such as Michael Medved, Irving Kristol, and the Robert Bork of *Slouching Towards Gomorrah*; they bemoan the aesthetic and moral "permissiveness" pervading popular culture, which they see as both a cause and an effect of collapsing standards of decency and behavior (the main reason Bork offers up censorship as the most effective response to a world filled with *Baywatch*, rap music, and Howard Stern). Leftoid pessimists, writes Cowen, include neo-Marxists such as the British Birmingham School (which champions the "subversive" potential of popular culture), latter-day Frankfurt Schoolers such as Jürgen Habermas (who characterizes pop as so much diverting pap), and media critics such as Neil Postman (author of, among other works, the anti-TV diatribe *Amusing Ourselves to Death*). There are important differences among them, Cowen correctly notes, but they all share a suspicion or outright contempt for market forces, arguing that the "commodification" of culture limits participation and stifles truly free and meaningful expression.

Cowen enlists himself in the much-thinner ranks of the cultural optimists, who include such characters as Charles Perrault, the 17th-century Frenchman who wrote the *Mother Goose* stories to show that the "modern" world could create an equivalent to Aesop's fables; Baldassare Castiglione, author of the early Renaissance classic *The Book of the Courtier* and a defender of cultural progress; and that ur-literary critic, Samuel Johnson, who defended writing for money and the "street literature" of his day. Optimists, Cowen suggests, typically believe that the current time compares well to the past and that the arts "tend to flourish in a modern liberal order."

Ever the optimist, Cowen smartly suggests that even pessimists further cultural process: "A consistent optimistic attitude should place cultural pessimism within a cornucopia of modern achievement. The pessimists who question contemporary trends help the modern world sort good from bad. If no one attacked contemporary culture, our understanding...would remain at a low level. The attacks force us [to] go back and reread, relisten, and reexamine our basic assumptions about art." As with the pessimists, this optimists' club is a transpartisan group, as can be gleaned from Cowen's list of contemporary believ-

ers: Camille Paglia (who defends Hollywood as a creative place), Alvin Toffler (who heralds the breakdown of mass media), and sociologist Herbert Gans (who argues that markets have helped increase cultural diversity).

Why Cowen is upbeat about the state of the arts is made clear in the three long chapters that make up the heart of the book: "The Market for the Written Word," "The Wealthy City as a Center for Western Art," and "From Bach to the Beatles: The Developing Market for Music." In each of these sections, Cowen presents case studies in how artists and their audiences have benefited from commercial transactions, driving home the central point that "the market brings crowd-pleasing artists such as Michael Jackson or Steven Spielberg in touch with their audiences, while at the same time securing niches for more obscure visions, such as those of Brian Eno or Peter Greenaway." In short, just as the market delivers, say, a huge variety of fruits and vegetables to the local grocery store—some so bizarre at first that they must come with directions on how to consume them—so too does it deliver all sorts of cultural products.

Hence, in his discussion of books and literature, Cowen stresses how commercial transactions grow the market for such fare, the result being more of everything: more writers, more readers, more books, more types of books. The market for literature, he writes, "first blossomed on a large scale in eighteenth-century England," partly in response to changed material conditions such as lower printing costs, the dissipation of court power, and increased wealth and leisure time due to the burgeoning Industrial Revolution. As "the publisher, bookseller, and the public subscription replaced the patron as the primary means of income for authors," cultural pessimists decried writing for money as one step up from prostitution (though, as Cowen, points out, "the seminal pessimistic tracts of Swift, Pope, and Goldsmith"—*Gulliver's Travels*, *The Dunciad*, and *Citizen of the World*—were all major commercial successes).

The real effect of the shift from patron to marketplace, however, was not the degradation of literature but a more diverse world of print. "The decline of the patronage system," Cowen writes, "gave women writers their foothold. Men, who held superior political and social connections, had received nearly all of the patronage support. Women writers could compete on an equal footing only when readers were the primary source of income." It was not, of course, only women (both as authors and readers), who had been shut out by the patronage system.

The same sort of process undergirds the tremendous—and continuing—boom in the publishing industry. In 1947, for instance, there were 85,000 books in print in the United States; 50 years later, the total was 1.3 million. The number of U.S. publishers has similarly skyrocketed over the same period, from 357 to more than 49,000. Perhaps more important than sheer numbers is the breadth of enterprise: "Most of these presses," writes Cowen, are independent small presses or university presses, rather than corporate giants. Many have a life mission of finding neglected works that have been passed over by the larger houses. Editors [at small houses] often work out of creative motives, rather than a desire for cash....The decentralization provided by these alternative outlets flourishes most strongly in a wealthy, commercial society."

Cowen maps analogous developments in markets for the visual arts and music, always paying careful attention to the specific characteristics of different media. Where books are easily—and perfectly—reproduced (and hence more likely to develop mass markets), most paintings and sculptures "cannot be reproduced without a significant decline in the value of subsequent units." As a result, "most renowned artists support themselves by selling unique creations to the wealthy, rather than by selling reproductions to the masses."

Beginning with Renaissance Florence and moving through 17th-century Amsterdam, late-19th-century Paris, and postwar New York, Cowen traces various market-related phenomena that have contributed to "creativity" in the visual arts. These range from skills transferred from related fields such as textile manufacturing to the development of cheaper, more durable materials to the creation of the modern art gallery (essentially created by disgruntled 19th-century French artists seeking to bypass government-sanctioned outlets). The story he tells is one of increasing artistic freedom *and* consumer choice. As Renaissance patrons bid for the time and effort of figures such as Cellini, Donatello, and Michelangelo, they had to increasingly cede power to the artist (and pay ever-higher sums). At the same time, the development of more efficient distribution networks—including brokers and dealers—has helped to bring more and varied art to the attention of buyers.

In his discussion of music, Cowen again starts with the Renaissance, but focuses on the gradual shift in emphasis from the composer to the performer, an evolution that roughly follows the development of recording techniques. Where pessimists such as Robert Frank and Phillip Cook, authors of *The Winner-Take-All Society*, argue that the ability to reproduce and sell work by superstar artists to massive audiences moves consumers to cease buying work by lesser-known musicians, Cowen convincingly makes the opposite case. He charts the "rise of Western music" with reference to major figures such as Bach, Mozart, Haydn, and Beethoven, exploring how the growth of public concerts (as opposed to court performances) and the gradual development of the sheet music industry (itself a byproduct of better print and paper technologies) gave composers an extra source of income and, hence, the ability to work more on their own terms.

Recording technology, invented in the late 19th century, furthered this process. The beneficiaries, of course, are not only, or even primarily, musicians. Listeners benefit from an immense and ever-growing catalog of works, both old and new (Cowen astutely notes that preserving art from the past is usually one of the first orders of business in a market order.) As in publishing, while a few major firms stand out, the industry nonetheless supports all sorts of producers offering alternative fare. Cowen's discussions of small but highly influential labels such as Sun, Stax, and Chess; the jukebox's role as an alternative musical outlet; and "how payola promoted cultural diversity" (by giving acts with no major-label backing access to radio) are filled with interesting insights. He notes, for instance, that between 1948 and 1955, the four largest record companies (Columbia, Capitol, Decca, and RCA

Victor) accounted for 78 percent of the records on the *Billboard* Hit Parade. By 1959, after rock and rhythm and blues had stormed the scene (largely on indie labels), the big four's share had tumbled to 34 percent.

Where cultural pessimists typically bemoan the supplanting of symphonic music by rock and rap, Cowen writes, "classical music—of both the older and newer sorts—is by no means dead. The sound of classical music flourishes like never before." That's partly because of market incentives: Rather than record another version of a well-known piece such as the Brandenburg Concerti (of which dozens of versions already exist), companies look for something new to sell. While the works of Bach, Mozart, and Beethoven "have never been more accessible," the works of "obscure composers—such as Aho, Pousseur, and Scelsi—are now for sale in stores in American suburbs, supposedly an arid wasteland for culture."

By documenting the sheer profusion of cultural products available and by outlining the market-based mechanisms that promote such plenitude, *In Praise of Commercial Culture* fully succeeds in its basic goal of presenting "the capitalist market economy [as] a vital...institutional framework for supporting a plurality of coexisting artistic visions, providing a steady stream of new and satisfying creations, helping consumers and artists refine their tastes, and paying homage to the eclipsed past by capturing, reproducing, and disseminating it." This is an impressive achievement, one underwritten by Cowen's careful, thoughtful analysis.

Yet, as I suggested earlier, *In Praise of Commercial Culture* presents an incomplete case against contemporary variants of cultural pessimism, which are generally less concerned with the quantity of cultural offerings than with issues of its "quality" (only the most reality-challenged critics—who do exist, I might add—argue that there is actually less stuff out there to choose from). Indeed, the pessimists are pessimistic precisely because Cowen is undeniably correct that "market wealth supports creative artworks of many different kinds" and that "market exchange and capitalism produce diverse art, rather than art that appeals to one particular set of tastes."

From the cultural pessimists' point of view, this proliferation of cultural tastes *is* the problem with today's scene. Right-wing and left-wing pessimists both tend to view culture as didactic and instrumental, as a means to an end. Those ends differ, of course: Right-wingers want art that will inculcate proper conservative values, while left-wingers prize culture that unmasks power relations and foments the need for radical, systemic change. (There is, further, a more purely aesthetic cultural pessimism which mistakes the decline of a particular artistic form or movement for the abandonment of all standards—as when, say, "classic rock" fans decry rap as "crap.") But both agree that culture must be controlled to further a particular worldview.

If Cowen is correct in arguing that culture "consists of a continual dialogue between producer and consumer...[that] helps both parties decide what they want" and that markets facilitate such conversations, then the roots of cultural pessimism are fully exposed. Indeed, when one adds that producing and consuming culture helps people decide not just what they want but to express and explore who they are, the problem for pessimists is virtually insoluble.

It has never been easy to control culture, in the sense of enforcing a single, or even dominant, standard. Increases in wealth, education, and leisure time, along with technological advances that make culture ever cheaper to produce and consume has only made this task that much more difficult. After all, who can control music when every garage in the country can become a rehearsal hall? Who can control literature when anyone with Web access can distribute his or her work?

In such a situation, pessimists, as Cowen himself recognizes, will never be convinced by the argument that the sort of culture they like is alive among other forms, any more than conservatives are comforted by the fact that heterosexual relationships flourish among homosexual ones or leftists are heartened that some companies are employee-owned "collectives." The impasse between optimists, who celebrate an endlessly prolific culture, and pessimists, who lament such a reality as a fall from grace, is unlikely to be bridged any time soon (if ever). But by contextualizing pessimism within a larger dynamic of cultural growth and by showing the beneficial effects of markets on art, *In Praise of Commercial Culture* remaps the debate in a way that should greatly inform all future arguments.

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Revolutionary History

By John J. Pitney Jr.

The Freshmen: What Happened to the Republican Revolution?, By Linda Killian, Boulder, Colo.: Westview, 496 pages, $28.00

Lessons Learned the Hard Way: A Personal Report, By Newt Gingrich. New York: HarperCollins, 256 pages, $25.00.

When they took control of Congress in 1994, Republicans promised to cut spending and transform Washington politics. Since then, they've had good days and bad days. May 22 of this year was especially rotten. On that date, the House approved a six-year, $218 billion authorization of federal highway and mass transit programs.

It's easy to measure just how bad this bill is. First, give a literal interpretation to the term "pork barrel," and reckon how much real, edible, dead-pig pork we could buy with $218 billion. Pork comes in many varieties, so which should we use? In light of how much courage lawmakers showed on this issue, the logical choice is "boneless." Supermarkets sell boneless pork for $3.39 a pound, so the highway bill equals about 64 billion pounds of pork.

That's 237 pounds for every man, woman and child in the United States. Think about that: Unless you are unusually big, your share of the highway bill ex-

ceeds your body weight.

No diabolical Democrats force-fed fat into a reluctant GOP. Republicans were the main culprits, gleefully turning from Jenny Craig into Orson Welles. They voted for the bill 143–56. Even the "revolutionary" Republicans first elected in 1994 supported it by a margin of 32–18.

Accordingly, the subtitle of *The Freshmen* is especially timely: "What happened to the Republican Revolution?" Linda Killian, a former reporter for *Forbes*, takes a long, anecdotal look at the House GOP class of 1994, focusing on a dozen members. She gives special attention to Van Hilleary of Tennessee, a good case study. Early in 1995, Hilleary helped lead the fight for congressional term limits—which became an embarrassing rout. Republicans wasted energy squabbling over several different versions, including Hilleary's proposal to let each state set its own limit. Many nominal supporters were quietly happy to see term limits die, since they now had the majority and were never serious about the idea in the first place.

At the time, the term limits vote seemed a rare exception: Before their 100-day deadline, Republicans won House passage of all the other elements of the Contract with America. By the following year, however, retreats were becoming more frequent. From a free market perspective, an especially troubling vote came when the House approved a 90-cent increase in the minimum wage. Meeting with constituents in 1995, Hilleary voiced the feelings of most people in his party: "I'm a free-market person, and I think the free market ought to set the wage." Yet 93 Republicans ended up voting for the increase, including Hilleary and 28 other freshmen.

What happened? Despite its subtitle, Killian's book does not supply a detailed explanation, instead putting narrative ahead of analysis. (A more systematic study is Nicol Rae's recently released *Conservative Reformers.*) Nevertheless, *The Freshmen* does contain some clues. With a good eye for detail, Killian notices that lawmakers "are yessed, kowtowed to, and generally stroked by everyone, even staffers who work for other members." Who would want to lose such treatment over a little thing like principle?

The lust for re-election can quickly turn revolutionaries into Romanovs. Take Hilleary's fellow freshman from Tennessee, Zach Wamp. (Say the name aloud: It's the sound of a phaser stunning a Klingon.) He began his congressional career as a zealous budget cutter but soon became a vocal advocate of such classic pork barrels as the Tennessee Valley Authority and the Appalachian Regional Commission.

Even when Republicans want to do the right thing, they find it hard to make their case to the public. The class of 1994 had soaked up Newt Gingrich's teachings about strategy, tactics, and rhetoric, but balked at his suggestion that they actually read a list of books. Says Killian: "Many freshmen, Hilleary among them, ignored the list, insisting they had no time for read-

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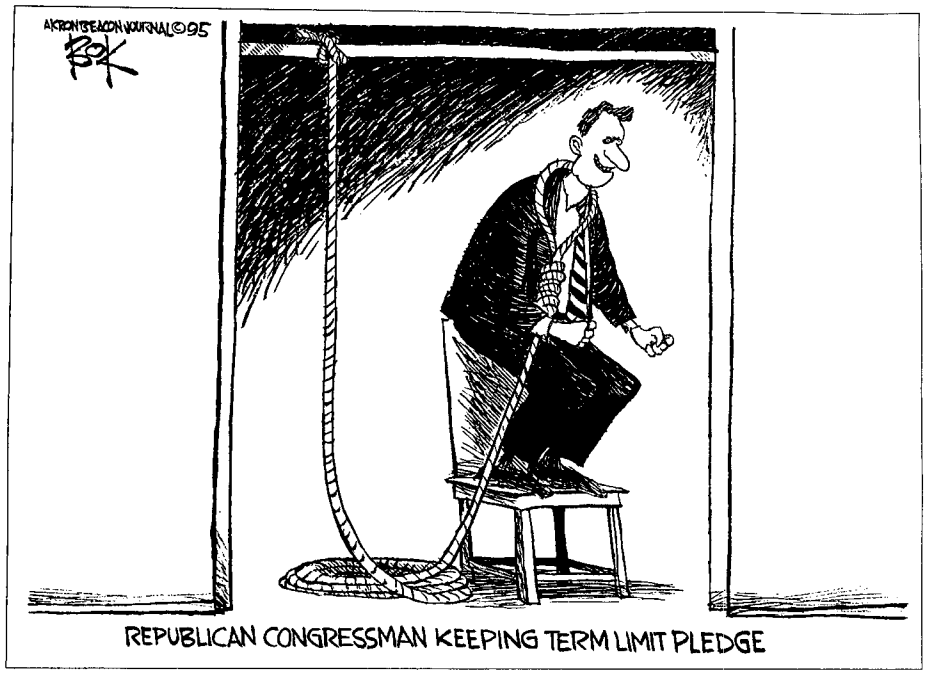

ing." Gingrich's list included Tocqueville's *Democracy in America*, which Hilleary had never heard of.

That says a lot. Some GOP lawmakers, such as Californians Chris Cox and David Dreier, really can engage in high-level intellectual debate. As for the rest, too many start floundering when the discussion moves beyond their staff-written talking points. It's not that floor debate directly changes roll-call votes; rather, C-Span and talk shows influence attentive voters. When House Republicans go on television only to face evisceration at the hands of Barney Frank, their morale plummets and they cave in.

The Freshmen would have been a more useful book if it had spent more time on the political context and less on vignettes that go nowhere. A whole chapter describes the troubles of Utah Rep. Enid Waldholtz, whose career crashed when her husband turned out to be a big fat crook. It's a sad tale, but not representative of anything else. How many other lawmakers are married to 300 pounds of criminality?

For a while, Newt Gingrich was heading for the same weight class. But as he recounts in his memoir-cum-manifesto, *Lessons Learned the Hard Way*, Senate Majority Leader Trent Lott gave him some chastening advice just before President Clinton's 1997 State of the Union Address. When the camera's on, said Lott, lean forward so as to minimize your girth. An embarrassed Gingrich then went on a weight-loss program and, as the jacket photo suggests, it worked.

Alas, all Washington ailments do not lend themselves to such straightforward cures. In a thoughtful introductory chapter, Gingrich acknowledges that he had underrated the difficulty of changing the federal government. The experience of the 104th Congress reminded him that a speaker must contend with a Senate that gives blocking power to the minority party and a president who wields the power of the veto. Other chapter headings point to lessons both sensible and obvious: "Pick Your Fights Wisely," "Stay on Offense," and "Learn to Keep Your Mouth Shut." Apparently he remembers the title of a 1996 book by David Maraniss and Michael Weisskopf: *Tell Newt to Shut Up!*

This book has weaknesses. First, it's the memoir of an active politician who must still appeal to voters and deal with the colleagues he writes about. Works in this genre lack the candor of, say, *The Confessions of St. Augustine*. In Gingrich's telling, he regarded last summer's abortive internal coup as a series of misunderstandings among well-intentioned people. Press accounts indicate that he was a wee bit angrier than he lets on here.

Another problem is more peculiar to Gingrich. Though he has a lively mind, he often lacks intellectual discipline, undercutting himself through overstatement. In *Lessons*, he talks about *Washington Post* stories "designed to keep us off balance" and approvingly quotes a GOP consultant that media polls are "deliberately" biased against the GOP. Bias yes, conspiracy no. Mainstream reporters surely see the world through a liberal lens, but it's hard to prove that they are intentionally skewing their own stories.

In the same vein, he wisely advises against underestimating the skill and tenacity of Democratic politicians, then proceeds to overestimate their unity. When he depicts the Democrats as a lockstep party "committed to policies and institutions that often violate the public's sense of decency," he is indulging in caricature, not serious political thought.

His policy prescriptions are sketchy. Noting that the federal, state, and local levels of government now take up about 38 percent of our income, he proposes to set a peacetime limit on all taxes at 25 percent. "This should not, however, be done by passing a federal law," he says. "As with social security reform, I think we must have a national dialogue and build a national majority for these goals."

The book is quite specific on one policy issue: the highway bill. Though deficit concerns led him to postpone action from the fall of 1997 to spring of 1998, Gingrich calls it "a meritorious bill." He argues that the money would come not from general revenues but from a highway trust fund overflowing with proceeds from the federal levy on gasoline. That rationale raises an obvious question: Instead of spending all the money on concrete, why not slash the gas tax? Wouldn't that be a big step toward the goal of limiting the total tax take?

Gingrich suggests the answer: "[E]ven in a conservative Republican Congress the pressure for more transportation spending is enormous." He could have stricken *transportation* from that sentence. Though his own commitment to economic conservatism has been spotty (see "The Many Faces of Newt Gingrich," February 1997), the problem goes beyond the speaker's office. Committee chairs want power, which means bigger federal programs to supervise. Backbench members

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want re-election, which means more pork to take home. No matter how tight-fisted a leader may be, it is hard to restrain those pressures.

Would Republicans act differently if they had bigger majorities in both chambers, along with control of the White House? Maybe, but if the highway bill is any sign, nobody should expect a revolution. That's a lesson we've all learned the hard way.

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Nowhere to Hide

By Christine Peterson

The Transparent Society: Will Technology Force Us to Choose Between Privacy and Freedom?, by David Brin, Reading, Mass.: Perseus Books, 378 pages, $25.00

New technologies are disrupting society's evolved checks and balances. Advances in computing lead to low-cost encryption—privacy for our online communications and finances. Advances in sensing lead to low-cost surveillance—tracking of our movements, actions, speech, and physical purchases. As technologist Mark S. Miller and legal scholar David Friedman both point out, our formerly unified world of partial privacy is splitting in two: an online world with much more privacy and a physical world with much less.

The knee-jerk reaction from most of us is that the first change is good and the second is bad: We want more privacy, everywhere. David Brin's goal is to convince us of the opposite. He succeeds only halfway —but that half is brilliant.

Brin's credentials for the task are appropriate and unusual. As a former practicing scientist, he can understand the basics of these new technologies. As a science fiction author, he has experience in projecting their effects into the future.

The book's message on surveillance is: "The cameras are coming; they will soon be everywhere. Complaining won't stop them, so we might as well turn them to our benefit." Once seen only in banks, then retail stores, cameras are now sprouting along the roads. Tiny cameras used to be so expensive that only spies used them. Soon they'll cost so little that each of us can afford to have many: "surveillance technology for the rest of us." Sensors, microphones, cameras everywhere.

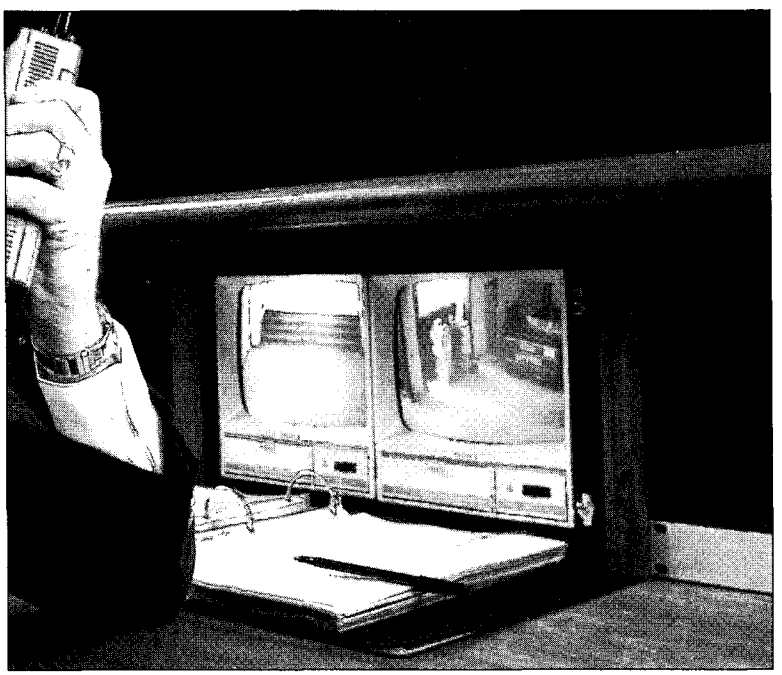
This prospect makes practically everyone nervous. The political right wants economic privacy, to discourage redistribution. The political left wants "lifestyle" privacy, to discourage morality-based interference. Libertarians want both kinds of privacy. All understand that privacy is vital to protecting their preferred areas of freedom—what the other side doesn't know about, it can't prevent.

Brin advocates another path: protecting freedoms through openness and accountability instead of secrecy. Openness —letting the data flow where it may— promotes personal responsibility in both economic and social arenas. This in turn decreases the temptation to have the state intervene. By aligning individuals' incentives with the results of their actions, accountability gives us more robust freedom than privacy alone can ever guarantee.

As Brin emphasizes, this is not a new insight. Accountability has always been part of what makes societies work. He makes the case for openness in a relatively nonpolitical way, often emphasizing its usefulness in simply protecting our physical safety.

This usefulness is increasing, not decreasing. After decades where external threats of mass destruction seemed far away, and internal ones were nonexistent, the use of sarin gas by Aum Shinrikyo in Japan reminds us that chemical and biological weapons are smaller, cheaper, and easier to hide than old-style weapons. It used to be sufficient to fly planes over enemy countries to look for weapons facilities. Now we are going to have to pay different kinds of attention, in more places, to head off disaster. Arms control and personal privacy issues were once easy to separate. Now they're blurring together.

This is going to take some getting used to. We're all in favor of "personal empowerment," but it can be taken too far. Your neighbors have a startup company in their



The Surveil State: Once seen only in banks, security cameras are now ubiquitous. As prices for sensors, microphones, and other surveillance equipment continues to drop, author David Brin asks, how will privacy fare?

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garage—they say—but it could be something else. So far we've been lucky in the United States: Our cultists generally choose to kill only themselves, not arrange to take guests along as a favor. Brin points out that one major incident could change American attitudes toward privacy overnight. We'd better figure out in advance how to tame this new world of tiny weapons, or we could lose both privacy and freedom when demagogues—democratically elected by panicked voters—implement their safety nazism.

The problem is that "accountability" is not as sexy a rallying cry as "privacy." The importance of accountability—a.k.a. fairness, justice—is so deeply ingrained in us that we rarely bother to discuss it. Children are taught the fairness principle very early, and then spend the rest of their lives learning the bitter fact that few areas of life are fair. To avoid sounding naive, we soon learn to stop even using the word.

But as concepts, fairness and accountability underlie our entire legal system. They are a large part of what makes nonviolent interaction possible, what enables us to plan. The most basic rule is that if you hurt someone or his possessions, you must pay, or have a very good explanation of why you shouldn't have to. You are responsible for your actions and can be called to *account.*

To see the benefits of accountability, consider what happens when we can't get it. If we can't identify who caused a given problem, responsibility cannot be assigned and becomes diffuse: It becomes an externality, a tragedy of the commons, a "social problem." Every such problem is "our" problem, causing disputes about what we—usually, the state—are going to do about it.

It's hard to overestimate the costs of our current situation of poor accountability. Consider the drug war: Unknown drug users inflict costs on society, giving the political right an excuse to implement drug prohibition. The result is the same as last time we tried alcohol prohibition: disrespect for the law, an increase in gangs and organized crime, and the corruption of law enforcement, which could even spread into the military to the extent that it is required to perform interdiction. The corruption goes beyond the United States, dragging down countries far poorer than we. It took 13 years for us to realize that alcohol prohibition was causing more problems than it solved. Today we focus on accountability for alcohol users: Cheap alcohol detection, combined with social pressure, has reduced drunken driving.

Accountability problems cause noxious side effects that hurt everyone. When an offending individual cannot be identified, sometimes we blame an entire group, resulting in prejudice. The unfairness of this causes outrage, leading to demands that the blamed group be compensated: "social justice." Both sides of the argument try to get their views embodied in laws which turn out to be both intrusive and costly to individuals; youth curfews are an example. If instead we enforce accountability—actual justice for individuals—we can reduce this cynical, damaging groupism.

We all have a gut sense that privacy is important to head off interference: from the left in economic matters, from the right in personal morality matters. There are entirely too many laws and regulations already in place that affect us—so many that we don't know what most of them are.

Not only humans are damaged by lack of accountability. The tragedy of the commons applies equally to the environment. Today we try to protect the environment with crude regulations that inflict high costs even where they aren't necessary, such as California's requirement that every underground gasoline tank be replaced because some leak. Large companies can absorb the cost, but independents are being driven out of business. With cheap sensors, we could have accountability: If your tank is deteriorating and about to leak, you must replace it.

In all these cases, what we need to make more just decisions is better information. That's what the cameras, microphones, and sensors could give us—assuming we can find a way to ensure the new information is handled properly. Brin's proposal: Instead of putting law enforcement agencies in charge, put the people themselves in charge. Distribute all publicly gathered information to everyone. Again, it's an unnerving thought, but possibly less unnerving than the alternative.

One option that isn't available is to not collect the data. When the needed instruments are so small and cheap, it will be collected by many. The only question is who gets the data and how it can be used, which brings us back again to the goal of privacy.

Brin points out that the right to privacy is not considered as strong as, say, freedom of speech. Privacy is a fairly recent invention. Only with the rise of cities, and wealth enabling large houses, have we had any privacy worth mentioning. In tribes, villages, small towns—in most human environments throughout our history—we knew our neighbors' business in detail. The anonymity we enjoy, or don't enjoy, in today's cities may well turn out to be a short-term condition. Certain standards of behavior were drummed into us over those long millennia, but as today's urban incivility illustrates, it may be that accountability is returning just in time.

Privacy extremism leads to perverse results. European privacy regulations on what data may be stored in computer databases are so restrictive that they are often ignored entirely. When privacy concerns dominate, they lead to restrictions on others' right to see, remember, and share data—this last being a form of speech. As Brin points out, gathering and connecting data is a central part of human nature. "Information wants to be free," so they say, but it's even more true that for us, information wants to be correlated: It's what we do. Trying to inhibit this human drive—knowledge prohibition—is doomed to failure; it will merely drive knowledge underground.

On these drawbacks of privacy, and the benefits of openness, *The Transparent Society* is both convincing and relatively nonpolitical, thereby reaching far more readers than it would positioned as politically right, left, or libertarian. This moderate perspective is strengthened by re-

peated references to history, to the value of maintaining systems that have been leading to improvement for some time now—evolved systems. By the end of the book, the reader is better able to think calmly about the coming surveillance technologies and how we can not only tolerate but even benefit from them.

Brin is less moderate, and less convincing, in his coverage of encryption technology. He is particularly harsh in his treatment of encryption advocates such as the "cypherpunks," stooping frequently to name calling and straw-man attacks. Whereas Brin accepts surveillance technology as inevitable and mostly good, he regards encryption technology as close to evil, and those who promote it he usually portrays as extremists.

Given Brin's preference for openness, it's tempting to see this as simply an emotional reaction to a technology that happens to push in the opposite direction, toward privacy. But we should look first for a deeper explanation, and the book gives us a clue.

We all have a gut sense that privacy is important to head off interference: from the left in economic matters, from the right in personal morality matters. There are entirely too many laws and regulations already in place that affect us—so many that we don't know what most of them are. The more aware we become of this, the more important privacy is to us.

Brin's response to this concern is that with enough openness, everyone will be seen to be in violation of something. This situation of mutually assured guilt will, in theory, protect us from prosecution and, over the long term, cause pressure for the laws to be reformed.

This makes sense, as far as it goes. But we have to live now, in the short term, and today laws are enforced unevenly. Brin should forgive us for preferring that the offending laws be reformed first, before the whole world finds out—possibly before we ourselves do—that we are in violation of some law. For those who don't believe we have reason for concern, here's an example: I recently had the fun of calling a friend to let him know that he is a felon. This home-owning, taxpaying family man—one of the kindest, most ethical people I know—owns an art object which consists of a decorated walking stick with a pretty little sword inside. Imagine his surprise to learn that mere possession of such an object is a felony in California.

If he can be an unwitting felon, it could happen to anyone. We're told that ignorance of the law is no excuse, but that principle only works when laws are few and simple. Otherwise, trying to abide by the law becomes a time-consuming and risky guessing game.

Brin complains that the cypherpunks—encryption activists—regard government as the sole threat to their freedom. He sees other potential sources of trouble, such as corporations. But for the baby boom and later generations, nongovernmental entities have not been a big problem—unless those entities get control of some state power. Coercive interference has mostly come via government: telling them what they may and may not put in their mouths; whom they may hire and how much they must pay; what products they may and may not sell and to whom they may sell them; what pieces of paper they must buy to be allowed to provide what services—the rules are nearly infinite and often serve special interests, rather than the public interest.

Many of these rules don't make sense, at least for responsible grownups engaging in voluntary transactions. When technologists—a.k.a. engineers—such as the cypherpunks encounter a system like this one that is broken somehow, they don't just complain. They do what they are best at: They try to fix it.

But fixing systems from Washington, D.C., is almost impossible. Some heroic technologists, such as John Gilmore and Matt Blaze, do travel to Washington to try to help fix the laws, but it's a nauseating task. Bureaucrats and politicians live in a world of words, opinions, and spin control; hearing about today's technological realities is of little or no interest to them.

So it's natural that technologists should turn instead to ways of fixing a system that give faster, more reliable results. If the laws can't be fixed, they'll improve privacy so the laws don't matter as much. Brin, as a

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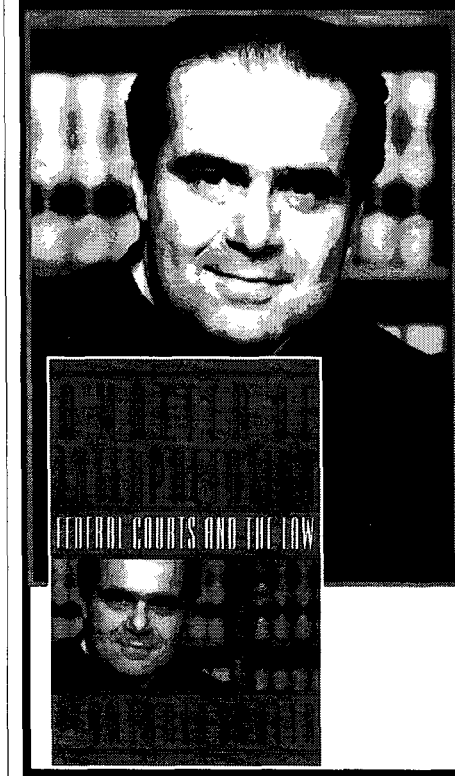

A Matter of Interpretation

Federal Courts and the Law

Antonin Scalia

Edited by Amy Gutmann

"Love him or hate him (it's hard to imagine a neutral opinion), Scalia is a brilliant and engaging writer. This tantalizing short debate with his equally brilliant critics shows just how radical our most conservative justice is."—*San Francisco Chronicle*

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scientist rather than an engineer, does not sympathize with this intense desire to personally repair broken systems. He sees social systems as more like natural ones, evolving slowly on their own, not directly improved by individual human action—and in most cases, this is the right way to look at them. But it is the universal desire for fairness, for justice, that pushes each of us to try to improve social systems. This at least Brin should recognize and sympathize with, even in the cypherpunks.

There are some other problems with *The Transparent Society.* It's too long, redundant, sometimes overly dramatic. There are far too many *I*'s, *me*'s, and exclamation points! Brin makes few policy suggestions, and the ones he does make—such as a bit tax on encryption—seem dubious.

But these are minor points, and are compensated for by the author's continually emphasizing that he does not claim to have the right answers, and that the best way to find such answers is through vigorous discussion of the issues from many perspectives. Brin invites us to criticize him, and has made it easy to do so by allowing two key chapters to be posted online. You can join in this discussion—and actually "mark up" his writing with your own comments—at http://crit.org/openness.

The alternation in the book between points you agree with, and those you disagree with, combined with so much repetition, may have you pulling your hair out as you read. It's enough to make one suspect that the author, educated at Caltech—a world leader in advanced practical jokes—has done this on purpose to infuriate all readers and thereby pull them into the debate. If so, it works.

Brin's book succeeds in being provocative and stimulating, as advancing technologies threaten to jerk us back and forth between danger and safety, domination and freedom. ◆

Christine Peterson is executive director of Foresight Institute, www.foresight.org, and co-author with Gayle Pergamit of Leaping the Abyss: Putting Group Genius to Work *(knOwhere Press). Her next book is tentatively titled* Plain Talk about Technology, the Future, and Other Scary Topics.

Aging Bulls

By Charles Oliver

Easy Riders, Raging Bulls: How the Sex-Drugs-and-Rock 'n' Roll Generation Saved Hollywood, by Peter Biskind, New York: Simon & Schuster, 506 pages, $25.00

At a 1970 Hollywood party, a stoned Dennis Hopper turned to George Cukor—a gentleman of the old, studio school of moviemaking and the director of such classics as *Adam's Rib* and *My Fair Lady*— and muttered, "We're going to bury you. We're gonna take over. You're finished."

It was the then-new Hollywood confronting the old. And while many of Hopper's young peers were mortified by his behavior, most of them shared his sentiments. They thought that they—and the edgy, personal films they made—were the wave of the future. But their future has now come and gone. Today, Dennis Hopper appears frequently on TV talk shows, plugging such edge-less extravaganzas as *Waterworld.* Hopper the talk-show guest wears expensive suits and is apt to speak of the joys of golf and of voting Republican.

Easy Riders, Raging Bulls is Peter Biskind's examination of the group of young and youngish filmmakers who challenged the studio system in the 1970s, briefly held the world in their hands, and were eventually felled by their own excesses and by the fickle tastes of movie audiences. His tale ends with the re-emergence, more or less, of the studio system these movie mavericks thought they would destroy.

A former editor at *Premiere* and *American Film* magazines, Biskind has a keen eye for detail and a gift for storytelling. But while his book spins many interesting tales about the people of the film community, it fails to address the cultural and economic forces that have shaped their industry over the last 35 years. In a previous book, *Seeing Is Believing,* Biskind laid out an intricate, though decidedly leftist, explanation of the cultural forces that shaped '50s films. This book isn't quite so ambitious. His best explanation for why the quirky films preferred by the 1960s film crowd gave way to big action spectacles is this quote from director William Friedkin, who made such '70s touchstones as *The French Connection* and *The Exorcist*: "*Star Wars* swept all the chips off the table. What happened with *Star Wars* was like when McDonald's got a foothold, the taste for good food just disappeared."

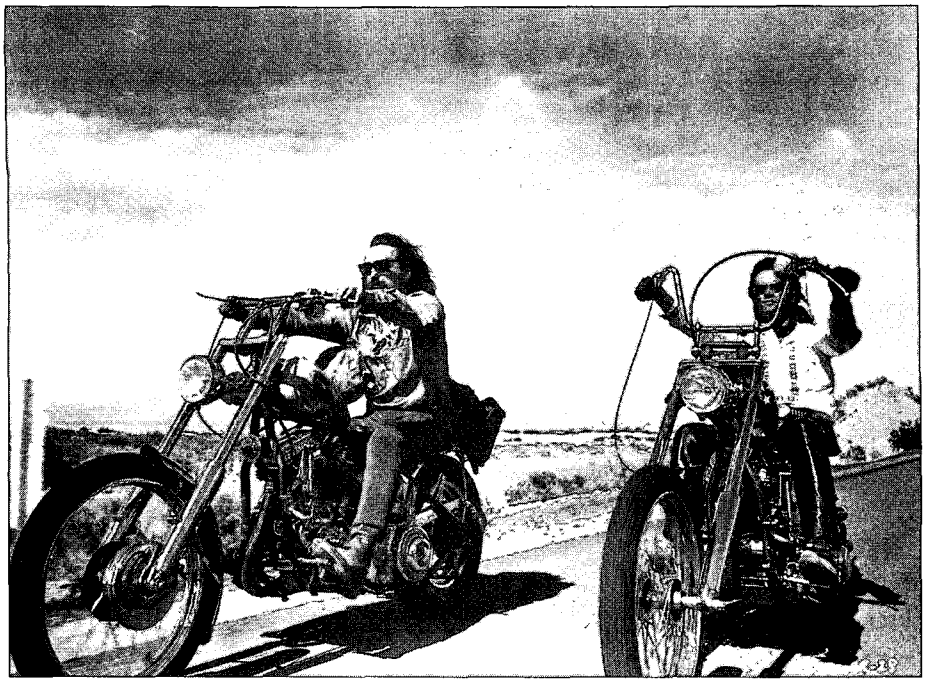
Biskind starts his tale in the mid-1960s, when the big studios were in the grip of a gerontocracy. Jack Warner, in his 70s, was running Warner Bros. Darryl F. Zanuck, well into his 60s, was head of 20th Century-Fox. At Paramount, founder Adolph Zukor, in his 90s, and long-time aide Barney Balaban, nearing 80, remained powerful forces on the board of directors.

Their sense of the public's taste was waning. Theater attendance was declining, and the studios were losing big money on films like *Hawaii, The Bible,* and *Doctor Doolittle.* For every big hit like *The Sound of Music,* there were many, many failures.

But in 1967, something unexpected happened. Warner Bros. released a small film starring a B-level leading man named Warren Beatty: *Bonnie and Clyde.* The studio thought little of the movie and gave it little support. Reviews were mixed. But young people sought the film out, attracted both by its then-novel level of violence and its adult treatment of the star-crossed lovers.

It was one of the year's biggest hits. Two years later, an even smaller film, *Easy Rider,* tapped into the counterculture and became a major hit. "To the Hollywood old guard, the good news was that after nearly a decade of floundering, the movies had finally connected, found a new audience," writes Biskind.

Studios tried to tap into this youth market by hiring young directors and producers and giving them previously unheard-of autonomy in the hope that the new crowd would grind out more *Easy*



They Blew It, Man: *Easy Rider* director and co-star Dennis Hopper (left, pictured with Peter Fonda) once boasted that he and his young turk compadres would "bury" the old Hollywood studio system. They did for a time—producing memorable movies such as *M*A*S*H*, *One Flew Over the Cuckoo's Nest*, and *The Exorcist*—before getting buried themselves by the next generation of filmmakers.

Riders. Some studios continued to make old-style family films, but few customers bought tickets. Contrary to the claims of such conservative critics as Michael Medved, Hollywood didn't abandon older filmgoers or families. That audience abandoned Hollywood.

For a time, the new talent delivered. *M*A*S*H*, *One Flew Over the Cuckoo's Nest*, *Five Easy Pieces*, and *The Exorcist*, among others, attracted big audiences. But within a few years, most of the golden boys turned to tin. Some, like Hal Ashby, were sidetracked by drugs or other personal problems. Others, including William Friedkin and Peter Bogdanovich, seemed to lose touch with the audience.

Biskind asserts that this development led the studios to take back the power they had given to filmmakers. The end had come by 1975, according to Biskind. That summer, Paramount released *Jaws* in hundreds of theaters across the nation, an unheard-of practice. It also unleashed a massive—and expensive—national TV ad campaign, also unprecedented. *Jaws* went on to earn a then-staggering $129 million. The summer thrill-ride blockbuster was born.

"*Jaws* changed the business forever, as the studios discovered the value of wide breaks—the number of theaters would rise to one thousand, two thousand, and more by the next decade—and massive TV advertising, both of which increased the cost of marketing and distribution, diminishing the importance of print reviews, making it virtually impossible for a film to build slowly, finding its audience by dint of mere quality," writes Biskind. "As costs mounted, the willingness to take risks diminished proportionately. Moreover, *Jaws* whet corporate appetites for big profits quickly, which is to say, studios wanted every film to be *Jaws*."

True, *Jaws* did revolutionize the way films are released and marketed. But Biskind misses another important point. By 1975, the oldest members of the baby boom were entering their 30s. A new crop of teens was making its presence felt at the box office. And they weren't that interested in films that were downbeat or overtly political. Maybe that's because the world around them seemed downbeat, and politics didn't appear to offer them many solutions.

Biskind follows his characters into the '80s, but his tale essentially ends there. And he misses some important developments. First, while the big studios survived, they did so only by ceding power to outside entities. Yes, the studios still largely decide which films get funded and distributed to theaters. But they have increasingly relied on agents and independent production firms to make movies.

In the so-called Golden Age of the studios in the '30s and '40s, a studio contracted writers, directors, and actors, and assigned them to projects under the tight control of the studio head. Today, someone else is likely to put together a package of talent and bring it to the studio to try to get it funded. Depending on the size of the film and track record of the producer, the studio may have very little creative control over a film.

For a time, the system did seem geared to the big action blockbuster. But in the late 1980s, Miramax came along and showed that smaller films targeted at niche markets could earn a tidy profit. Studios responded by buying or starting their own art-house divisions. Now, there's room at the multiplex for *The Full Monty* as well as *Titanic*, for *Boogie Nights* on the screen next door to *Men in Black*.

Finally, by focusing on theatrical films, Biskind misses entirely the rise of cable and home video. If one counts made-for-TV movies and films that go straight to video, Hollywood makes more full-length features now than ever before. Granted, few of these films are classics. Sturgeon's Law, which holds that 90 percent of everything is crap, is especially true in Hollywood.

But along with Sturgeon's Law are rules of conduct recognized by Adam Smith. If the big studios have survived, it is because the people running them have been smart enough, over time, to adapt to a rapidly changing market, and to recognize that they can no longer gear their films to a few large audiences. Instead, they must now make a broad array of films for increasingly different and ever-changing tastes. Dennis Hopper did bury George Cukor, just as he promised he would at that long-ago party. Hopper was buried in his turn. Hollywood parties on.

Contributing Editor Charles Oliver (c-oliver @usa.net) writes for Investor's Business Daily.

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Let's Regulate Cable Now!

Oops. Didn't we already do that?

By Thomas W. Hazlett

The outrage is palpable. Cable TV rates are increasing at *four* times the rate of inflation, and subscribers are mad as hell. Local monopolies are gouging consumers, who need protection from evil video conglomerates. Let's get Congress to regulate rates now!

That's what groups with *consumer* in their names are telling reporters and politicians, and the pleas of the Consumers Union and the Consumer Federation of America are not going unheeded. Articles have been written, hearings have been called, action *will* be taken. There's just one glitch: Cable rates are *already* regulated.

Six years ago, the Cable Television Consumer Protection and Competition Act of 1992 directed the Federal Communications Commission to clamp an extensive set of price controls onto some 11,000 U.S. cable systems. The FCC quickly created a new Cable Services Bureau, hired 240 additional staff members, and promulgated a series of rate rollbacks between April 1993 and July 1994. By the time the dust had settled, the FCC claimed that subscriber charges had been reduced by 17 percent—about $3 billion annually.

Nice going, Washington. That ought to prove that government really can work for the people. Indeed, the Clinton administration—which appointed a new, Gore-affiliated FCC chairman to spearhead the cable regulation effort—claimed the rate controls as a prime-time example of "reinvented government."

And then, reality. Who could have predicted it? When the feds clamped new limits on rates, cable system operators responded. They chopped back plans to expand capacities; they froze spending for new channels; they rejiggered tiers and squeezed additional revenue out of unregulated services. (Premium channels, such as HBO and Showtime, weren't subject to rate controls.) Most embarrassing to the FCC was the explosion in home shopping networks, which, unlike other channels, actually pay cable systems to be carried.

In the end, even with lower rates, customers found themselves getting a worse bargain—evidenced by the fact that basic cable subscriber and viewer growth rates plunged in the wake of FCC rate rollbacks. Subscribers were voting with their feet, rejecting the rate regulation scheme. By November 1994, under intense pressure from the owners of new cable networks (who had borne the brunt of the industry retrenchment under controls), the FCC relented. It allowed cable operators to raise rates at twice or three times the rate of inflation—just like before controls. Subscriber rates immediately began rising, as new services and higher quality programming were offered to customers.

There is little doubt that greater competition would redound to the advantage of consumers, although some of the remedies available to policy makers are curiously low priority. For instance, the "wireless cable" industry today languishes as a potential competitor, largely because the FCC refuses to move forward with rules which would allow such operators to deliver high-speed digital services (including Internet access) to local subscribers.

But one thing has been learned via bitter experience at the FCC: It is possible to do worse than unregulated monopoly. Price controls which inspire suppliers to screw around with services, marketing, and packaging to evade rate caps can result in falling subscribership—indicating that consumers consider themselves worse off when "protected."

These findings are not particularly controversial among those who have studied the matter. Even the Clinton FCC has given up the pretext; it has quite intentionally allowed rate ceilings to drift skyward. Despite its good-faith effort to quash the evil cable cabal, the wreckage of new programming—and the destruction of industry growth rates—proved too *high* a cost.

No matter underlying realities, pols must pose. Congressional Republicans understand the futility of re-regulating cable TV, but that doesn't mean that Trent Lott can't make the evening news by issuing a "stern warning" to the cable moguls that "people are not going to stand for [double-digit price increases in their cable bills] and neither are we."

Never one to miss its turn, the administration has ordered a study of the cable rate problem by the Department of Commerce. This bold move puts one agency of Clinton appointees to examining the fruits of another agency of Clinton appointees; what you get here is great fanfare on announcement of the "investigation," and then...years of diligent study. For good reason. Even former FCC staffers who were in charge of cable policy in the glory regulation days of the "17 percent rollback" now openly concede that the industry—and its complicated video programming product—was much too elusive a target for effective rate controls.

Cable regulation was a very useful social experiment—and continues to be. For now we may view the spectacle of "public interest" groups championing rate controls to be imposed by regulators who have given up on them.

As reported by the A.P., the Consumers Union now urges Congress "to take whatever steps are necessary to make the FCC do its job to protect cable consumers." In short, C.U. feels regulation is too important to be left to the regulators. Which, in turn, suggests that consumer protection is far too important to be left to the consumer advocates.

Contributing Editor Thomas W. Hazlett (hazlett@primal.ucdavis.edu) teaches economics and public policy at the University of California, Davis, and is the author, with Matthew L. Spitzer, of Public Policy Toward Cable Television: The Economics of Rate Controls *(MIT Press).*

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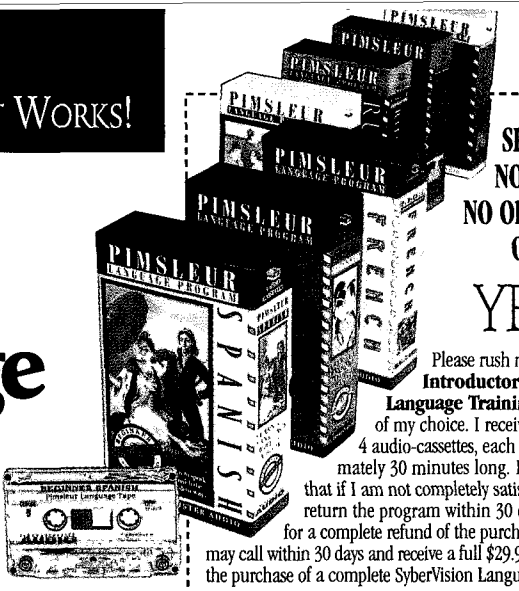

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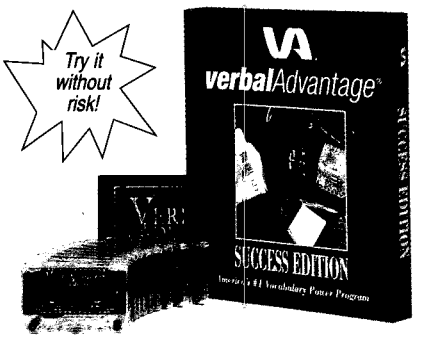

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